United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-6054

United States Court of Appeals
For the Second Circuit

B

P/S

GIUSEPPE CATANZARO,
Plaintiff-Appellant,

-against-

CENTRAL GULF STEAMSHIP CORP.,
Defendant and
Third Party Plaintiff-Appellee,

-against-

UNITED STATES OF AMERICA,
Third Party Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
MAY 28 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

On Appeal From The United States District Court
For The Southern District Of New York

Appellant's Appendix

SHAPIRO & SOMER
Attorneys for Plaintiff-Appellant
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PAGINATION AS IN ORIGINAL COPY

CIVIL DOCKET
STATES DISTRICT COURT

IN ADMIRALTY

1a

JUDGE [redacted]

Jury demand date:

73 CIV. 672

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
GIUSEPPE CATANZARO vs CENTRAL GULF STEAMSHIP CORP. DEFT. & THIRD PARTY PLTFF. against U.S.A. THIRD PARTY DEFT.	For plaintiff: ~~MURRAY BOGATIN~~ ~~1000 DEER PARK AVE~~ ~~DEER PARK, NEW YORK, 11729~~ ~~(516) 667-6161~~ KLEIN, COHEN, [illegible] 15 PARK ROW NEW YORK, N.Y. 10038 BA 7-3787 For defendant: DARBY, HEALEY, STONEBRIDGE, [illegible] 19 RECTOR STREET NEW YORK, N.Y. 10006 WH-33520 (ATTY FOR DEFT. & THIRD PARTY PLTFF) Paul J. Curran (3rd.pty deft) Gilbert S. Fleischer 26 Federal Plaza, Suit 4048 (atty in Charge) N.Y.C. 10007 264-4048

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed X	Clerk	2/13/73	M. Bogatin	10	
		2/15/73	U.S.	—	10
6 mailed 2-10-76	Marshal				
s of Action: JONES ACT	Docket fee				
	Witness fees				
on arose at:	Depositions				

UNITED STATES COURT OF APPEALS FILED APR 20 1976 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

BEST COPY AVAILABLE

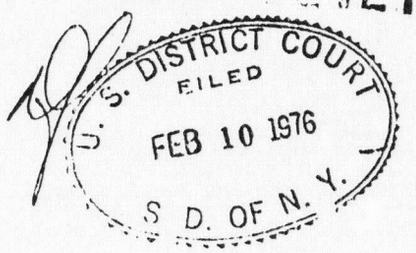
73 CIV. 67

DATE	PROCEEDINGS	Date Order or Judgment Noted
b 13-73	Filed complaint and issued summons.	
b 27-73	Filed summons with marshals ret,,served Central Gulf Steamship Corp. on 2/16/73	
r 8-73	Filed Pltffs notice of motion, Re: substitute Atty's, ret before Bauman J. on 3/14/73	
r 13-73	Filed stip & Order that the 2nd & 3rd count of the complaint are withdrawn, without prejudice to renew, So Ordered Bauman J.	
r 20-73	Filed Pltffs opposing affirmation, by Murray Bogatin	
r 21-73	Filed memo endorsed on motion papers dtd. 3/9/73. Motion granted, So Ordered Bauman J.	
r 17-73	Filed Pltff's notice of motion, Re: Substitute Atty's, ret before Bauman J. on 5/2/0/73	
r 20-73	Filed memo endorsed on motion papers dtd. 4/17/73. Motion granted, So Ordered Bauman J.	
y 17-73	Filed Pltff's notice of motion,Re; Contempt, ret before Bauman J.	
y22-73	Filed pltff's Amended Complaint.	DHS&W
y 29-73	Filed deft's ANSWER to the complaint.	
y 29-73	Filed deft. & third party pltff's third party complaint,	
y 29-73	Filed deft's notice to examine and take depostions of the pltff.on 6/26/73.	
n 7-73	Filed summons with marshals ret, Served U.S. Aty. on 5/31/73.	
y 20-73	Filed stip. & order extending time of 3rd pty. deft. to answer to 9-17-73--Bauman, J.	
.25-73	Filed ANSWER to complaint by 3rd.pty. deft.	PJC
.30-73	Filed pltfs. interrogatories .	
.30-73	Filed pltfs. request to produce.	
.27-73	Filed pltffs affdvt & notice of motion striking answer of deft & 3rd-pty plntff & entering a judgment by default. Ret. 1-4-74.	
an.9-74	Filed MEMO END on pltfs. motion filed 12-27-73. Motion withdrawn upon condition that all discovery be supplied by 1-15-74. So Ordered. BAUMAN,J.	
an.11-74	Filed deft's answers to interrogs.of pltff.	
an.11-74	Filed deft's response to pltffs request to produce.	
.9-74	Case Reassigned to Tenney,J.(mn)	
.14-74	Filed Pltff's Note of Issue.	
-74	PRE-TRIAL CONFERENCE HELD BY Magistrate Sacchs	
-24-75	Filed Deft&3d pty pltff notice to examined Robert S.Friend.	
-15-75	ACTION REASSIGNED TO LEVET,J.	
-21-76	PRE-TRIAL CONFERENCE HELD BEFORE LEVET,J.	
-27-76	Before Levet,J. Jury trial begun .	
-28-76	Trial continues.	
-29-76	" "	
-30-76	" "	
-03-76	" " & concluded. Jury verdict for deft.& against the pltff. CLerk directed to enter judgment in favor of deft. with costs . Deft. moves to dismiss the claim over against 3rd.pty. U.S.A. Granted without costs.	
-10-76	Filed Judgment. Ordered that the deft. Central Gulf SS. Corp. have Judgment against pltff. dismissing the complaint with costs to be taxed. Ordered that 3rd.pty. complaint is dismissed without costs The issue of maintenace & cure to be decided by the court. Levet,J. Judgment Ent. Clerk. m/n Ent.2-17-76.	
-08-76	Filed pltff's notice of appeal to the USCA from final judgment ent 2-10-76. Mailed copies to Darby Healy,Stonebridge & Whelan & U.S. Attorney.	
-16-76	Filed Bill of costs as taxed in the sum of $478.32, in favor of deft. Central Gulf Steamship Corp. as against pltff. & added to the judgment #76,217. Clerk.	
-16-76	Filed affidavit of F.J. McCaffrey, Jr. in support of deft's submitted bill of costs.	

DATE	PROCEEDINGS
Apr 20-76	Filed deft-3rd pty. pltff.'s notice of motion for an order taxing additional costs against pltff., etc. On submission on 31 March-1976
pr 20-76	Filed pltffs. affdvt. in opposition to motion to tax additioncal costs.
r 7-76	Filed Memorandum & Order # 44198: The motions of defendant and 3rd party plaintiff for additional costs is granted in the amount of $448.74 and the motion for dismissal of pltffs. claim for maintenance & cure is denied. Levet,J.

TRUE COPY
ENTERED
A. E. Stuart, Clerk
By
Deputy Clerk

JUDGE LEVET



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GIUSEPPE CATANZARO Plaintiff		
-against-	:	73 Civil 672 (RHL)
CENTRAL GULF STEAMSHIP CORP.	:	
Defendant and Third Party Plaintiff	:	JUDGMENT
-against-	:	
UNITED STATES OF AMERICA	:	
Third Party Defendant	:	

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Richard H. Levet, United States District Judge, and a jury, on January 27,28,29,30 and February 3, 1976, and the Court having submitted the attached special questions to the jury, and the jury having answered the said special questions, and the jury thereafter having returned a verdict in favor of the defendant. Defendant having moved to dismiss the claim over against third party defendant, and the Court having granted the said motion, and the Court having directed the Clerk to enter judgment, it is,

ORDERED, ADJUDGED and DECREED: That defendant CENTRAL GULF STEAMSHIP CORP., have judgment against plaintiff GIUSEPPE CATANZARO, dismissing the complaint, with costs to be taxed, and it is further,

ORDERED: That the third party complaint be and it is hereby dismissed, without costs. The issue of maintenance and cure to be decided by the Court.

Dated: New York, N.Y.
February 10, 1976

Raymond F Burghardt
Clerk

APPROVED:

Richard H Levet
U.S.D.J.

Bill of Judgment in the sum of $478.32, as against plaintiff, and added to the Judgment.

Feb. 11, 1976.

s/Raymond F. Burghardt
CLERK

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the 27th day of January in the year of our Lord, One Thousand Nine Hundred and Seventy Six,

PRESENT:
HONORABLE: Richard H. Levet
United States District Judge.

Giuseppe Catinello
- vs -
Central Gulf Steamship Corp.
- vs -
United States of America

Docket No. 73 Civ 672

Now comes the Plaintiff by Klein, Cohen and Schwartzenberg, by: William Schwartzenberg
and moves the trial of this cause. Likewise comes the Defendant by Darby, Hehley, Stonebridge, Wheldon, by Thomas Hehley and ~~Thomas [illegible]~~, 3rd Party Deft, by Dept of Justice, by Terrance Gargon
Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial. JAN 27 1976

JAN 28 1976 Trial Continues

JAN 29 1976 Trial Continues

JAN 30 1976 Trial Continues

FEB 3-1976 Trial Continues and concluded. Jury verdict at 3:50 PM. Please see copy of special verdict form attached. Jury verdict in favor of the defendant and against the Plaintiff. Court directs Clerk to enter a judgment in favor of the defendant and against the Plaintiff each to bear its own costs. Defendant moves to dismiss the Claim over against 3rd Party Deft U.S.A. GRANTED without costs. Levet, J. Issues of maintenance and cure to be decided by the Court.

Trial Concluded.

(AN EXTRACT OF THE MINUTES)

NOTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GIUSEPPE CATANZARO,

Plaintiff,

-against-

CENTRAL GULF STEAMSHIP CORPORATION,

Defendant and Third Party Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

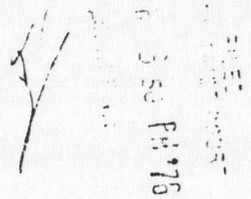
Third Party Defendant.

----------x

SEAMAN'S CASE

73 Civ. 672 (RHL)

NOTICE OF APPEAL



Notice is hereby given that Giuseppe Catanzaro, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the final judgment entered in this action on the 10th day of February, 1976.

Dated: New York, New York
March 8, 1976.

KLEIN, COHEN & SCHWARTZENBERG
Attorneys for Plaintiff

By _____
A Member of the Firm

Office & P. O. Address
15 Park Row, New York, N.Y. 10038
Tel. 227-3787

To:

CLERK
United States District Court
Southern District of New York

DARBY, HEALY, STONEBRIDGE & WHELAN
Attorneys for Defendant and
Third-Party Plaintiff
19 Rector Street
New York, N. Y. 10006

THOMAS J. CAHILL
United States Attorney
GILBERT S. FLEISCHER
Attorney in Charge
Admiralty & Shipping Section
U.S. Department of Justice
26 Federal Plaza, Suite 4048, New York City 1000
Attorneys for Third-Party Defendant

27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

GIUSEPPE CATANZARO,

Plaintiff,

-against-

CENTRAL GULF STEAMSHIP CORPORATION,

Defendant.

- x

73 Civ. 672 A.B.

Plaintiff Demands a Trial by Jury

SEAMAN'S CASE

Under Jones Act for Personal Injuries

AMENDED COMPLAINT

FILED
U.S. DISTRICT COURT
JAN 23 10 23 AM '73

ACTION UNDER SPECIAL ACT OF CONGRESS ENABLING SEAMEN TO SUE WITHOUT PREPAYMENT OF COSTS OR THE GIVING OF SECURITY THEREFOR

Plaintiff, by his attorneys, KLEIN, COHEN and SCHWARTZENBERG, for his amended complaint, respectfully alleges:

FOR A FIRST COUNT

1. At all the times hereinafter mentioned, defendant was and is a foreign corporation, with offices for the transaction of business in the City, County and State of New York, and within the jurisdiction of this Court.

2. At all the times hereinafter mentioned, defendant owned the SS GREEN FOREST.

3. At all the times hereinafter mentioned, defendant operated the SS GREEN FOREST.

4. At all the times hereinafter mentioned, defendant managed the SS GREEN FOREST.

5. At all the times hereinafter mentioned, defendant controlled the SS GREEN FOREST.

6. At all the times hereinafter mentioned, defendant equipped and manned the SS GREEN FOREST.

7. On or about the 31st day of October, 1970, plaintiff was employed by defendant as a member of the crew of the SS GREEN FOREST in the capacity of ordinary seaman, and except as otherwise indicated, was a member of said crew at all the times hereinafter mentioned, and was engaged in the furtherance of his duties and of the interests of defendant.

8. It was the obligation and duty of defendant to furnish plaintiff with an adequate number of officers and co-employees, Master and other officers; to furnish plaintiff with a safe place in which to do his work; to supply him with suitable and safe means, materials and appliances in and for the performance of his work; to maintain the same in proper condition for the proper performance of said work; to promulgate and enforce proper rules in relation to the foregoing, and to inspect the aforesaid materials, appliances and means; to provide plaintiff with a safe and seaworthy vessel; and to warn plaintiff of the dangers to be encountered in the performance of his work.

9. On or about the 31st day of October, 1970, while plaintiff was acting within the scope of his employment and in the interests of defendant herein, he was caused to become seriously injured, as hereinafter more fully described, all by reason of the carelessness and negligence of defendant, its officers, agents, servants, employees and other persons for whom defendant was responsible, and in violation of the aforesaid duties and obligation without any fault or negligence upon the part of plaintiff herein.

10. That on October 31, 1970, while plaintiff was actually engaged in the course of his duties aboard the aforesaid

vessel and acting pursuant to orders, a mooring line was caused to strike him on the right leg, all by reason of the carelessness and negligence of defendant as aforesaid, and as a result thereby, plaintiff did suffer severe and painful injuries, including a fracture of the right femur; and plaintiff was otherwise injured at or about his body and person with attendant injury to his nerves and nervous system; plaintiff has suffered and will suffer great pain, agony and mental anguish; has paid out and will pay out large sums of money for medical and surgical attention and medicines; has lost and will lose large sums of money which he otherwise would have earned as wages and in the form of board and lodging; that he has been forced to defray the cost of his maintenance and cure; and that plaintiff verily believes he has been permanently injured, all to his damage in the sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.00).

11. Plaintiff brings this action pursuant to Section 33 of the Merchant Marine Act of 1920, commonly known as the "Jones Act", and all statutes amendatory thereof and supplementary thereto.

FOR A SECOND COUNT

12. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" to "11", inclusive, as fully and completely as though herein repleaded at length.

13. That it was the absolute and non-delegable duty of defendant to furnish plaintiff with a safe and seaworthy vessel, which duty defendant failed to carry out, thereby causing plain-

tiff to sustain the injuries hereinbefore described, to his damage in the sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.00).

WHEREFORE, plaintiff demands judgment against the defendant on the First Count in the sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.00); and on the Second Count in the sum of SIX HUNDRED THOUSAND DOLLARS ($600,000.00); together with the costs and disbursements of this action.

KLEIN, COHEN and SCHWARTZENBERG
Attorneys for Plaintiff

By _____
A Member of the Firm
Office and P. O. Address
15 Park Row
New York, New York 10038
227-3787

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

GIUSEPPE CATANZARO,

Plaintiff

-against-

CENTRAL GULF STEAMSHIP CORPORATION,

Defendant

----------x

ANSWER

Index #73 Civ. 672

(JUDGE BAUMAN)

FILED
MAY 29 12 00 PM '73
S.D. OF N.Y.
U.S. DISTRICT COURT

Defendant, by its attorneys, Darby, Healey, Stonebridge & Whelan, answering the plaintiff's complaint herein, alleges upon information and belief, as follows:

ANSWERING THE FIRST COUNT:

1. Admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the complaint.

2. Denies the allegations contained in paragraphs 8, 9 and 10 of the complaint.

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the complaint.

ANSWERING THE SECOND COUNT:

4. Repeats and realleges each and every admission, denia and denial of knowledge or information sufficient to form a belief as they apply to paragraphs in the complaint numbered 1 through 11 inclusive, with the same force and effect as if set forth herein at length.

5. Denies the allegations contained in paragraph 13 of the complaint.

AS AND FOR A FIRST, SEPARATE, COMPLETE AND/OR PARTIAL DEFENSE TO THE COMPLAINT HEREIN DEFENDANT ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

6. That if the plaintiff sustained any illness and/or injury, as alleged in the complaint, the same were caused and/or contributed to by the plaintiff's own negligence, for which the defendant is not liable.

WHEREFORE, Defendant demands judgment herein, dismissing the complaint, together with the costs and disbursements of this action.

DARBY, HEALEY, STONEBRIDGE & WHELAN
Attorneys for Defendant

BY: _____
A Member of the Firm

19 Rector Street
New York, N. Y. 10006

Summons Issued

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GIUSEPPE CATANZARO,

Plaintiff

-against-

CENTRAL GULF STEAMSHIP CORPORATION,

Defendant and Third Party Plaintiff

-against-

THE UNITED STATES OF AMERICA,

Third Party Defendant

FILED MAY 29 12 01 PM

THIRD PARTY COMPLAINT

Index #73 Civ. 672

DEFENDANT AND THIRD PARTY PLAINTIFF, CENTRAL GULF STEAMSHIP LINES, INC., SUED HEREIN AS CENTRAL GULF STEAMSHIP CORPORATION, COMPLAINING OF THE THIRD PARTY DEFENDANT, THE UNITED STATES OF AMERICA, RESPECTFULLY ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIRST: That at all times hereinafter mentioned, defendant and third party plaintiff was, and is a corporation organized and existing under and by virtue of the laws of the State of Louisiana and has an office and place of business in this District.

SECOND: That at all times hereinafter mentioned, defendant was and still is the owner of the S/S GREEN FOREST.

THIRD: That at all times hereinafter mentioned, the third party Defendant, the United States of America, was and still is a sovereign corporation, and was and still is the owner of the Tug "ARMY 1957".

FOURTH: That on or about February 13, 1973, an action was filed in this Honorable Court by Giuseppe Catanzaro to recover damages for personal injuries allegedly sustained by him on October 31, 1970, while he was employed as a seaman and

was engaged in handling lines during the undocking of the S/S GREEN FOREST, at Cam Ranh Bay, South Viet Nam. An amended complaint was subsequently filed and a copy thereof is annexed hereto, and made a part hereof, as if set forth herein at length.

FIFTH: The said complaint of the plaintiff alleges, among other things, that, due to the negligence of the defendant and third party plaintiff, and the unseaworthiness of the vessel, and its appurtenances, he was caused to sustain severe and permanent injuries.

SIXTH: That the time of the happening of the events alleged in the complaint, the tug "ARMY 1957", owned, operated and controlled by the third party defendant, its agents, servants and employees, was, pursuant to agreement, engaged in undocking the S/S GREEN FOREST.

SEVENTH: At about 1515 hours on October 31, 1970, the said tug "ARMY 1957" was on the starboard side of the S/S GREEN FOREST, when the last mooring line was cast off from the dock and was being taken aboard the S/S GREEN FOREST. The eye of the said mooring line was moving parallel to the port side of the tug "ARMY 1957" when, without warning, the said Tug "ARMY 1957", under the direction of its master, or officer-in-charge, commenced maneuvers which caused its stern to swing away from the side of the GREEN FOREST and its bow to swing in with the result that the end of the said mooring line was caused to cross over the bow of the said tug where it caught on the tug's cruciform bow bitt, putting a sudden and severe strain on the said mooring line, with the result that the said mooring line was torn off the starboard windlass drum of the GREEN FOREST, causing severe and permanent injuries to the plaintiff, as alleged in his complaint.

EIGHTH: At the time of the events mentioned in the complaint, the said GREEN FOREST was properly manned and its gear and appurtenances were in a proper and seaworthy condition.

NINTH: That if the plaintiff sustained any injuries,

as alleged in the complaint, the same are improperly alleged as due to the negligence of the defendant and the unseaworthiness of the said GREEN FOREST, but were actually caused by the primary and active fault, neglect and want of care on the part of the third party defendant, its agents, servants and employees, in that:

a) The said Tug "ARMY 1957" was improperly manned;

b) The said tug "ARMY 1957" was, under the conditions that existed, negligently maneuvered;

c) The said tug "ARMY 1957" was unseaworthy.

TENTH: That if the plaintiff's injuries resulted in any way from an unseaworthy condition aboard the GREEN FOREST, which defendant and third party plaintiff denies, said unseaworthy condition was caused or created solely by the primary and active negligence of the third party defendant.

ELEVENTH: Thatit was the duty and obligation of the third party defendant, through its agents, servants and employees to conduct the undocking operations of the GREEN FOREST, in a safe and seamanlike manner and, if the plaintiff was injured as alleged in the complaint it was because of the failure of the third party defendant in the performance of such duty and obligation.

TWELFTH: That if the plaintiff should recover from defendant and third party plaintiff because of the matters alleged in the complaint, then defendant and third party plaintiff should recover over against and be indemnified by third party defendant, the UNITED STATES OF AMERICA, for all sums so recovered.

WHEREFORE, Defendant and Third Party Plaintiff demands judgment herein against third party defendant for all sums as may be recovered by the plaintiff against defendant and third party

plaintiff, together with the costs, and disbursements of this action, as well as reasonable counsel fees.

DARBY, HEALEY, STONEBRIDGE & WHELAN
Attorneys for Defendant and Third
Party Plaintiff

BY:_____
A Member of the Firm

19 Rector Street
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GIUSEPPE CATANZARO,

Plaintiff,

-against-

CENTRAL GULF STEAMSHIP CORPORATION,

Defendant and Third-Party Plaintiff,

-against-

UNITED STATES OF AMERICA,

Third-Party Defendant.

73 CIV 672 (AB)

ANSWER

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
OCT 25 4 OF PM '73

Third-party defendant, for its answer to the complaint of defendant and third-party plaintiff, shows upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 1 of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 2 of the complaint.

3. Admits that at all times hereinafter mentioned, the United States of America was and still is a sovereign corporation and was the owner of tug "ARMY 1957" and denies all other allegations contained in Paragraph 3.

4. Denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 4 of the complaint.

5. Denies the allegations in Paragraph 5, except admits the filing of a complaint as alleged and refers to the text thereof for its contents.

6. Admits the allegations set forth in Paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 7 of the complaint.

8. Denies the allegations contained in Paragraph 8 of the complaint.

9. Denies the allegations contained in Paragraph 9 of the complaint.

10. Denies the allegations contained in Paragraph 10 of the complaint.

11. Denies the allegations contained in Paragraph 11 of the complaint.

12. Denies the allegations contained in Paragraph 12 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE AND COMPLETE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

13. The third-party complaint fails to state a cause of action because of the passage of more than two years from the time of the occurrence complained of and the time of filing the third-party complaint.

AS AND FOR A SECOND AFFIRMATIVE AND COMPLETE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

14. Plaintiff's injuries were solely caused by the acts, fault, neglect, or want of care of defendant-third party plaintiff, Central Gulf Steamship Corporation.

AS AND FOR A THIRD AFFIRMATIVE AND COMPLETE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

15. Plaintiff's injuries were not caused by any fault, neglect, or want of care of the United States, but were solely caused or contributed to by the plaintiff himself.

WHEREFORE, third-party defendant demands judgment dismissing the complaint, granting defendant its costs and

disbursements, and that the Court grant such other and further relief as it may deem just and proper.

Dated: New York, New York

October 25, 1973

PAUL J. CURRAN
United States Attorney
GILBERT S. FLEISCHER
Attorney in Charge
Admiralty & Shipping Section
U.S. Department of Justice
26 Federal Plaza, Suite 4048
New York, New York 10007
Telephone (212) 264-0486
Attorneys for United States

By: Terence Gargan
TERENCE GARGAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GIUSEPPE CATANZARO,

Plaintiff,

- against -

73 CIV 672

CENTRAL GULF STEAMSHIP CORPORATION,

Judge Levet

Defendant and
Third Party Plaintiff,

- against -

UNITED STATES OF AMERICA,

Third Party Defendant.

----------x

PLAINTIFF'S REQUEST TO CHARGE

As to Negligence

1. The defendant owed the plaintiff the duty of furnishing him with a reasonably safe place in which to do his work.

Hanson v. Luckenbach S.S. Co.Inc.
65 F. 2d 457

2. Negligence, as used in the "Jones Act" must be given a liberal interpretation, and includes any knowing or careless breach of any obligation which the employer owes to the seamen. The obligation of a shipowner to his seamen is substantially greater than that of an ordinary employer to his employees.

Koehler v. Presque-Isle Transportation Co.
141 F. (2d) 490 (C.C.A.2), cert.denied 322 U.S.764

3. If the jury finds that the defendant failed to provide plaintiff with a safe place in which to work plus a failure to provide him with adequate aid and assistance at the time of the unmooring; failed to declare an appropriate emergency so as to have sufficient crew members up forward to assist in the unmooring; that the second mate required an excessive number of turns

of the spring line to be placed on the gypsy head of the windlass, and said line had not been properly deployed in connection with the deck fittings; that the winch or windlass was not properly attended or controlled; that the second mate was incompetent and inattentive at the time of the unmooring and that the vessel was permitted or allowed to remain docked in the vicinity of possible enemy action when it could have been taken to a relatively safe anchorage long prior to the incident complained of; then any one of those negligent conditions, or combination thereof, could be said to make the defendant liable for the resulting injuries sustained by Mr. Catanzaro.

Johnson v. Griffiths S.S.Co.
150 F. 2d 224

4. The jury, in determining the liability of the defendant, can base same on either one or more negligent conditions created or permitted by the defendant aboard the SS GREEN FOREST.

Johnson v. Griffiths S.S.Co.
150 F. 2d 224

5. The plaintiff was bound to obey the orders of his superiors in the undocking or unmooring of the vessel despite the existence of any conditions thereat which were dangerous, hazardous or unsafe; and said plaintiff, while so proceeding did not assume any risk while active in acting in obedience to said orders.

See Darlington v. Nat'l. Bulk Carriers
2 F. 2d 817

6. The jury, in determining the defendant's negligence, should take into account the fact that defendant was aware in October of 1970 that the vessel was berthed in a war zone.

See The Friar Rock
69 F. Supp.538

7. The jury should further consider the fact that in such a war zone, emergency situations might arise requiring a fast unmooring operation for the vessel.

See Francis v. Seas Shipping Co.
158 F. (2d) 584

8. The jury should further consider the fact that the master and officers of the vessel were required to take all reasonable steps and measures which would reduce any dangers that might be encountered by the vessel in connection with such emergency situations requiring a fast unmooring of the vessel

Res Ipsa Loquitur

9. The plaintiff also bases the defendant's liability upon a rule of law, known as the Doctrine of Res Ipsa Loquitur. This is in addition to plaintiff's specific charges of negligence Said doctrine is a Latin term meaning that the thing or occurrence speaks for itself.

> "Res ipsa loquitur means that the facts of the occurrence may warrant an inference of negligence, not that they compel such an inference, but they furnish evidence of negligence where direct evidence may be lacking.
> "But, it is evidence to be weighed, not necessarily to be accepted as sufficient, which may call for explanations or rebuttal, not necessarily that it requires such explanation or rebuttal. When a thing which causes injury which is under the control of the defendant and an accident as such as in the ordinary course of things does not occur if the one being in control uses proper care it affords reasonable evidence in the absence of a reasonable explanation that the injury arose from the defendant's want of care."
> . . .

Dugas v. Kansas City So.Railway Lines
473 F. 2d 821, 825-826

"and there is no reason in logic or experience why res ipsa loquitur is not applicable to acts of a fellow servant"

Johnson v. U.S.
333 U.S. 46, 49
92 L. Ed. 468, 472

As to Unseaworthiness

10. Defendant shipowner owed plaintiff a warranty of a seaworthy vessel, which meant an absolute and non-delegable duty to supply and keep in proper order her appliances, crew, living and working conditions.

2, Norris, Law of Seamen, 3rd Ed., 692 et seq.

11. The aforesaid warranty of a seaworthy vessel extends to a safe place in which to work, including the defendant's obligation to provide plaintiff with adequate and sufficient aid and assistance in the unmooring of the vessel on October 31, 1970 at Cam-ranh Bay, Viet Nam.

See Waldron v. Moore-McCormack Lines
386 U.S. 724, 18 L.Ed. 2d 482

12. The aforesaid warranty of seaworthiness has been described as a species of liability without fault. This means that if the jury finds that plaintiff was not provided with adequate aid and assistance in connection with the unmooring of the vessel; that the line which struck him had been improperly wound on the gypsy head with excessive turns and had also been improperly deployed on deck in connection with the deck fittings, and the windlass or winch was not controlled, manned or attended, and the vessel was permitted to remain docked for several hours prior to the incident when it could have been previously maneuvered out to a safe anchorage, than any or all of these conditions having caused plaintiff to be struck and injured by the spring

line, then the defendant is liable for all subsequent damage without regard to its knowledge or lack of knowledge concerning said unseaworthiness.

Sea Shipping Co. Inc. v. Sieracki
328 U.S. 85

As to Evidence

13. If the jury finds that the deck log entries for October 31, 1970 were erased, defaced or otherwise altered, then such an alteration casts suspicion on the defendant's case and creates a presumption that the erased matter was adverse to its contention.

1, Norris, The Law of Seamen, 3d Edition, 1951.

Dated: New York, New York
January 26, 1976.

Respectfully submitted,
KLEIN, COHEN & SCHWARTZENBERG
Attorneys for Plaintiff

CATANZARO v CENTRAL GULF S.S. CO. 73 Civil 672

SPECIAL VERDICT - LIABILITY

1. Has plaintiff proved by a fair preponderance of the credible evidence that the defendant shipowner was negligent in any respect in the conduct of the unmooring operation of the SS GREEN FOREST at about 3 p.m. on October 31, 1970, and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on that date?

YES ____ NO ✓

Go on to question 2.

2. Has plaintiff proved by a fair preponderance of the credible evidence that the SS GREEN FOREST was unseaworthy at about 3 p.m. on October 31, 1970 due to the failure of defendant shipowner to provide adequate manpower and proper supervision during the unmooring operation of the SS GREEN FOREST at that time, and that such unseaworthiness was a proximate cause, in whole or in part, of an accident sustained by plaintiff on that date?

YES ____ NO ✓

1 Go 2 Stop

After having answered both questions, and your answer to either question 1 or 2 is "YES," go on to question 3.

However, if your answer to both questions 1 and 2 is "NO", omit all further questions and sign the Special Verdict on the last page.

3(a). Has defendant proved by a fair preponderance of the credible evidence that negligence on the part of the plaintiff contributed, in whole or in part, to the accident sustained by the plaintiff during the unmooring operations of the SS GREEN FOREST at about 3 p.... on October 31, 1970?

YES	NO
Go	Stop.

If your answer to question 3(a) is "YES", go on to question 3(b).

If your answer to question 3(a) is "NO", omit question 3(b) and sign the Special Verdict on the last page.

3(b). To what extent, if any, did negligence on the part of the plaintiff contribute to his injuries? (Express in terms of a percentage) _____%

SIGN THE SPECIAL VERDICT ON THE LAST PAGE

cmds

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GIUSEPPE CATANZARO, -vs- CENTRAL GULF STEAMSHIP CORPORATION, -vs- THE UNITED STATES OF AMERICA	73 Civ. 672

B e f o r e:

HON. RICHARD H. LEVET,
District Judge

New York, New York
January 27, 1976

A P P E A R A N C E S:

KLEIN, COHEN & SCHWARTZENBERG, ESQS.,
Attorneys for the Plaintiff
15 Park Row
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BY: WILLIAM SCHWARTZENBERG, ESQ., of Counsel

DARBY, HEALEY, STONEBRIDE & WHELAN, ESQS.,
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19 Rector Street
New York, New York
BY: THOMAS HEALEY, ESQ., of Counsel

U. S. DEPARTMENT OF JUSTICE
For Defendant U.S.A.
Admiralty and Shipping Section
26 Federal Plaza
New York, New York
BY: TERRANCE GARGAN, ESQ., of Counsel

Mr.Catanzaro has been a seaman for a great number of years and sailed in the Second World War right on through the Korean War and right up until the Vietnam War and the events that sort of took place here were transpiring during the Vietnam War and were in the area of Vietnam in a place called Cam Ranh Bay over there, which you probably have heard about and mentioned in newspaper accounts and television, and so on.

We will get to that later in a little more detail. Mr. Catanzaro had various duties aboard ship, and he had, as I stated, taken more than one voyage on this vessel, this GREEN FOREST, and in fact had taken one or two or three, I think maybe --

THE COURT: Please, you let your voice fall.

MR. SCHWARTZENBERG: I am sorry.

He had taken perhaps as many as two or three voyages to Vietnam.

Now, in September or thereabouts of 1971, the GREEN FOREST went with Mr. Catanzaro, the plaintiff here, as a crew member, one of the crew members, on a trip to the Far East and to the Vietnam area, and he was, I believe the vessel came from New York, went to Los Angeles, and eventually went to Manila and then to Vietnam. That was more or less the intinerary. I will stand corrected. I

expert explain some of these terms to you, and after that's done and after you have heard all the defendants' testimony, I am going to ask you to go out and come in and come in and I am sure you will bring a verdict for the plaintiff because this is his one and only day in court.

THE COURT: All right, that was a pretty long summation, counsel.

MR. SCHWARTZENBERG: Thank you.

THE COURT: Mr.Schwartzenberg, you have taken about 15 minutes, and I am going to give Mr. Healey equal time. He is going to speak for the defendant, Gulf Steamship Company.

Mr. Healey.

MR. HEALEY: If it please the Court, Mr. Schwartzenberg, Mr. Cargan, Madam Forelady and members of the jury.

Before I say anything, I should tell you it is also defendants' only day in court, so it makes no difference whose day it is, it is also your only day so you only have one chance to do right here.

Now, these openings. These are statements by the attorneys, and they are not the proof. You are not to rest your final verdict on what I say or what Mr. Schwartzenberg says to you. But it is an important part of the trial. The trial started when you first swore here that you would

give answers on the voir dire and be selected. So we are in the trial. And it is an important part of the trial, and I have to ask you to bear with me and try to understand because this is a helpful item in your effort to reach a verdict.

I am going to tell you where I agree with Mr. Schwartzenberg so that means it is easy for you. There is no quarrel there. And I am going to tell you, which is the big point, where we disagree and where your job comes in, where you must determine what is the fact. And I am going to tell you why we disagree.

By that I mean I am not going to say I disagree with you, but I am going to tell you what evidence exists that creates a totally different picture than has been presented here in the opening on behalf of Mr. Catanzaro.

The big thing, the important thing I must stress to you people, you must put yourselves in the circumstances that this accident happened in. It is the only way you can judge whether anyone was at fault. This was during an enemy armed attack. The Viet Cong were dropping rockets in on this ship.

We talk about walking in the PX, my goodness, I cannot understand that. Enemy rockets were being directed, and not just any place, they were being directed toward the

GREEN FOREST.

Now, how do I know that? I have reviewed the United States Army records which show that enemy rockets were coming in at the ammunition pier, and the ammunition pier was apart from the rest of the on-loading facilities in Cam Ranh Bay. This is where those ships carrying bombs, builets, tied up.

Now, you had a group of men sitting on the GREEN FOREST seeing the enemy forces attempting to blow up their ship. These guys were going to get killed. They weren't in the PX buying shaving cream, they were on a ship loaded with bombs and they see people shooting at them. I say that unless you people can put yourselves in the circumstances of a group of seamen on a bomb-laden ship trying their best to get the devil out of there, you can't judge this case fairly.

It is not a case of a group of men on a Sunday afternoon over in Brooklyn saying, let's sail out of here, and the mate getting the book and saying, first everybody stand here, second, let's check your uniforms. These guys had 14 minutes to get out of there.

B3

The Army records show that the first rockets arrived, I think it's 1444, 2:44 in the afternoon, and they got that GREEN FOREST out into the Stream before 3:00 o'clock.

that that is not a fair accusation to say that you didn't declare an emergency.

Now, they say you didn't have enough men there when you were letting go these lines. You should know a little bit about the lines. If that's the front of the ship and that's the back, they have got maybe four lines, great big heavy manila rope running from various spots on the stern down to the various fixtures that they tie in on the dock.

They had at least four, maybe five lines coming of the bow of the ship. Going to different points to hold that ship in there.

1444 they said, get out, they had nine lines to get rid of. He would have you say, hold it, wait until we get everybody back here. You couldn't tell them to stop sending the rockets. So something had to be done.

Now, they neglect to tell you that when this vessel left the States, well, Mr. Catanzaro knew, he had made three trips, these men vied for positions on these ships to Vietnam because they got a bonus as soon as they passed an imaginary line in the ocean that was supposed to be, now you are entering the war zone.

When they were carrying ammunition they got another 10 percent bonus. If they came under enemy attack

they got a third bonus. These fellows before they left the States knew there was a risk, knew they were going to be paid for the risk and they were hungry for the money.

Now they turn around and say, gee, there was a risk, we'll sue. So keep in mind these men were well aware and they volunteered. They sought it. They wanted the money, now they complain, gosh, there was an emergency. There certainly was.

But on top of that their union gave them a right to go ashore when they weren't on watch, and you could not keep them on the ship. They said you are shorthanded. They have got you coming and going. You can't keep them on the ship, but then he says, gee, you didn't have everybody on the ship.

You will get this proof. There was no way to hold them on. But yet within 14 minutes those men got that ship out. And it wasn't shorthanded. They say the boatswain wasn't there. The fellow fell ill and he's in the hospital. You should have gotten somebody else. But we're in Vietnam. All right, you have got to keep that in mind.

Now, their own witness, a fellow named McCoy, and I will read the depostion, has testified that the particular job they were doing when the accident happened required three men and an officer. And you will see that

cmds

going to be in the mud-flat, somebody is going to drop a bomb. He says, go ahead.

I think there were two risks facing these men at that time. Get that line aboard and get that ship out or we are going to get blown up. And move fast. Or we'll all sit here and wait till the line's, the ship will be in the mud.

Fellows in an emergency forced to make a decision. They did, and I'm suggesting to you and I'm suggesting that this Court will charge you that men in an emergency who make judgments --

MR. SCHWARTZENBERG: Objection to the charge, your Honor.

MR. HEALEY: My argument will be that men in an emergency who make judgments have to be given a fair shake by a jury. You can't sit as though you are home by your fire planning something out. That's why I say put yourself into their shoes and see if it was a fair judgment they made. That's the case.

As you can see, it's not the ordinary run-of-the-mill PX case. It's something that you have got to be looking at fairly and consider the men involved.

It isn't that complicated. It's important. It's very important when you consider a fellow's gone over

Q What was your pay there as an ordinary seaman, sir?

A I forgot right now what it was. About --

Q Approximately. You don't have to be exact.

A Well, I calculated per day --

THE COURT: No. The approximate amount, not how you calculate it.

Q Just approximately.

A $13 a day.

Q $13 a day?

A Yes.

THE COURT: $13 thousand for what period?

THE WITNESS: $13 a day.

THE COURT: $13 a day.

Q On occasion did you also receive bonuses for going to the war zone during the Vietnam War?

A Yes.

Q You did?

A Yes.

Q What would that bonus be, sir?

A 100 percent.

THE COURT: What was it, not what it would be.

Q Yes, what was it?

A 100 percent.

A Mr. Friend.

Q What was the third mate's name?

A I can't recall.

Q What was the captain's name, the Master's name?

A Mr. Curry.

Q What was the boatswain's name?

A Ebanks.

B6 Q Sorry?

A Ebanks.

Q In addition to those crew members, there were other crew members, were there?

A Yes.

Q Which of those crew members worked with you generally in your duties that you mentioned?

THE COURT: No. At that time.

Q All my questions are directed to at that time.

THE COURT: No, you have to state it. I am not going to take something for granted. Get the record clear.

MR. SCHWARTZENBERG: All right, sir.

Q At the time that you got to Vietnam, generally in that period of time that you were there, which were the --

THE COURT: You are just doing what I told you not to do, counselor. Make it definite. At that time on this day --

MR. HEALEY: I object to the question. I think it is much too vague.

THE COURT: Yes. Sustained.

MR. SCHWARTZENBERG: No, I mean at the time.

THE COURT: I don't care what you mean. It is not proper as to form. The objection is sustained.

Q Within the 10 minutes before the unmooring operation got under way you got your instructions, did you hear or observe anything in relation to the Vietnam War?

A Nothing --

THE COURT: Whatever that means.

Q Well, did you hear any bombing of any sort or any military operation of any sort under way?

A Not any that was unusual.

THE COURT: Well, now, that is no answer. You may move to strike it out.

MR. HEARLEY: Well, I move to strike it. I think it is irrelevant because we were talking about rockets, not bombs, and I think it is a completely different --

MR. SCHWARTZENBERG: Let's talk about rockets then.

Q Did you hear any rockets going over?

THE COURT: Strike out the previous answer.

Q Did you hear any rockets going off at the time,

just before you started to begin your unmooring --

A No, sir.

Q A few minutes before?

THE COURT: The answer is no.

THE WITNESS: No.

Q Had you heard any that day at all?

A No, sir.

Q Did you know of any emergency at all?

A No, sir.

MR. HEALEY: I object to that.

THE COURT: Sustained.

MR. HEALEY: Irrelevancy of --

THE COURT: It is a conclusion and it is irrelevant.

Q When there is an emergency --

THE COURT: What is that, sir?

Q When there is an emergency --

THE COURT: That is the same thing, isn't it?

MR. SCHWARTZENBERG: No. I haven't reached the question yet, Judge.

Q When there is an emergency does anything occur on board the ship to indicate the emergency?

MR. HEALEY: I object to that, your Honor.

THE COURT: Sustained as to form.

THE WITNESS: Starboard.

THE COURT: The bow?

THE WITNESS: Yes.

B7 5 Q To clarify, is this view taken looking toward the bow?

A No, looking toward aft.

Q But in the foreground --

THE COURT: It's looking aft; is that correct?

THE WITNESS: Looking aft.

THE COURT: I want his answer, not your answer.

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: If you're going to talk you will have to take an oath.

Q In the foreground of this picture, sir, where you are standing in this picture, you are standing here, sir (indicating)?

A Yes.

Q In this foreground here is this the winch that was involved or the windlass that was involved in this accident?

A Yes.

Q And was there any change from the time this picture was taken up until the day of this accident where this windlass was where the line was on it?

THE COURT: It seems to be a glazed photograph. Does it show up?

MR. SCHWARTZENBERG: Yes, it does, Judge. It shows up.

THE COURT: What have you done? What have you marked?

MR. SCHWARTZENBERG: He has marked the --

THE COURT: No, I'm asking him, not you.

What have you marked, sir?

THE WITNESS: I marked the W for windlass and D for drum.

THE COURT: D on the drum and W on the windlass?

THE WITNESS: Yes.

THE COURT: Very well.

THE WITNESS: It's also called --

THE COURT: No, don't -- all right, it's also what?

THE WITNESS: It's also called the gypsyhead, but for the jury we can also call it the drum. Yes, gypsy-head is another word for something that used to be --

Q Now, on October 31, 1970, what orders were you given at around 3:00 o'clock in the afternoon? Sir, what orders?

A I was asleep in my bunk.

line called the springline?

A Yes.

Q Would you tell us what that is? What is that line?

THE COURT: The springline.

A The springline is a line which springs the ship close to the dock. It's the last line used to be removed and that's why they give it the name spring, because it acts to spring the ship away from the pier. That was the last line we were taking up.

Q And would you please tell us how the lines are taken in? That is to say --

THE COURT: No, no. Not how they are taken in generally. How were they being taken in.

Q On this occasion what did you observe when you arrived there about the lines that were being taken in and about the equipment that was used to do it? What did you see?

A What did I see?

Q Yes, what did you see.

THE COURT: About the lines.

A About the lines. Well, when I got there the lines, there was only one more line to be taken in, and that's the one I took in, and then we took in the last line, the springline.

MR. SCHWARTZENBERG: Right.

MR. HEALEY: The last line, the springline.

MR. SCHWARTZENBERG: Right.

THE COURT: Will you make your questions a little clearer, more definite.

MR. SCHWARTZENBERG: All right, sir.

THE COURT: Proceed.

Q In reference to the springline, what was Jackson doing?

A Jackson was taking it off the drum.

Q Then did he do anything after he took it off the drum?

A Did he do anything after?

Q Yes. Did he hand the line to you, did he do something with it?

A He handed it to me, yes.

THE COURT: Then you coiled it?

THE WITNESS: Yes, and I coiled it.

Q Do you know how many times they were around the drum of the line?

A Yes.

Q How many?

A Five.

THE COURT: Did you count them?

Giuseppe Catanzaro,

-vs-

Central Gulf Steamship Corporation 73 Civ. 672

-vs-

The United States of America

New York, New York
January 28, 1976--11:00 a.m.

B9 (Trial resumed.)

(In the robing room with counsel and the plaintiff.)

THE COURT: Will you sit down over there, sir.

MR. CATANZARO: Yes.

THE COURT: You are under oath, do you understand that?

MR. CATANZARO: Yes, sir.

THE COURT: Now, I want to know what happened this morning. Why are you late? You were due here at 10:15, and it is now exactly 11:00 o'clock. You are 45 minutes late. Now why are you late?

MR. CATANZARO: This is why I'm late, your Honor. I wanted to know what to do about when you discharge your attorney.

THE COURT: Well, that is not before me now yet.

If it ever is. Now I want you to tell me why you were late this morning.

MR. CATANZARO: I got -- I took a cab and there was traffic on the west side.

THE COURT: You were stuck in traffic for 45 minutes?

MR. CATANZARO: No. Then we got out and I took the Independent Subway.

THE COURT: Where was the cab when it was, you say, stuck in traffic?

MR. CATANZARO: I got out and I --

THE COURT: No. Where was it I said, not whether you got out.

MR. CATANZARO: On 178th Street.

THE COURT: 178th Street? 178th Street itself? Not on any side street? Any avenue?

MR. CATANZARO: I didn't take a look at -- I just --

THE COURT: What was the name of the cab company?

MR. CATANZARO: I don't know. It was a gypsy cab. I called my attorney and I told him to tell Mr. Schwartzenberg --

THE COURT: Yes, I have heard about that, but that isn't what I want. I want to go to the horse's mouth.

cmds

That's for you to tell me. Now, what did you do after you got out of the cab?

MR. CATANZARO: I took the subway, the Independent.

THE COURT: And it was 45 minutes to get down here?

MR. CATANZARO: Yes.

THE COURT: Really? Was there any other cab available?

MR. CATANZARO: That's the first one that came along.

THE COURT: You took a cab then, another cab; is that right?

MR. CATANZARO: Yes, I took a --

THE COURT: Now, did you come down here by cab or by subway?

MR. CATANZARO: No, by subway.

THE COURT: Which was it?

MR. CATANZARO: Subway.

THE COURT: What was this cab, this second cab you just mentioned?

MR. CATANZARO: No, I only took one cab. I took one cab from my house.

THE COURT: Did you take a second cab?

MR. CATANZARO: No, sir.

THE COURT: All right.

MR. CATANZARO: One cab.

THE COURT: Now, if this happens again you are either going to pay some money to the court and to these lawyers or your case is going to be dismissed. I can't have that happen. Do you understand me? You have caused eight jurors to remain here doing nothing. You have caused the lawyers to be here doing nothing.

MR. CATANZARO: I'm sorry, your Honor. I didn't do it intentionally.

THE COURT: All right. Now, is there anything else here? All right, do you understand now?

MR. CATANZARO: No, no, your Honor, that's the purpose of my calling my attorney.

THE COURT: What is the purpose of calling your attorney?

MR. CATANZARO: I told Mr. Cohen to tell Mr. Schwartzenberg that I have dismissed him. I don't want him.

THE COURT: You can't dismiss an attorney in the midst of a trial, sir. And I'm not going to allow it. You can't do that. And if you did you would have to agree to pay him and a substantial amount, I assume. Have you prepared the case, counsel?

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Your office. I am not going to do that. That application must be denied. I can't do that in the midst of a trial. It is unfair and it is unsound and I just won't allow it. That application is denied. You must go on with this attorney. Do you understand me? Do you understand me, sir?

MR. CATANZARO: Yes. Yes, your Honor.

THE COURT: All right. Well, act accordingly then. You will be cross-examined this morning by Mr. Healey and possibly by Mr. Gargan and you will be still under oath.

Get the jury in, Mr. Clerk, and we shall proceed.

MR. HEALEY: Your Honor, could we --

THE COURT: Just a minute.

MR. HEALEY: Your Honor, could we speak to your Honor and let Mr. Catanzaro step outside a minute?

THE COURT: Yes. Just step outside a minute. Be available right in the courtroom. Don't leave the courtroom.

(Plaintiff leaves.)

MR. HEALEY: I would think this entire thing should be on the record, your Honor. I am concerned not only for the disposition of this case, but for you, Mr. Schwartzenberg. I don't know when a fellow says, I dis-

charge you, see, whether or not we are just getting into a problem here on an appeal or something where he is going to claim that he has been done dirt, that he has some --

MR. SCHWARTZENBERG: Yes.

MR. HEALEY: Why has he got a complaint against him? I think we should hear --

THE COURT: All right, get him back here and I will ask him why.

MR. HEALEY: I think we should hear. If he is going to come up with some flimsy excuse he should be told, fine, if he wants to --

THE COURT: All right, I will do that.

MR. HEALEY: Or you could tell him we can't at this point discharge a jury and we have started on a case. Mr. Gargan has two witnesses coming up from the South.

THE COURT: All right, bring him in here.

MR. HEALEY: He can proceed pro se or he can proceed through Mr. Schwartzenberg.

THE COURT: He won't proceed pro se.

MR. HEALEY: Of course not, but I think he should be made to consent to this rather than order it. Don't you agree?

MR. SCHWARTZENBERG: Yes. He should be given the alternative.

(Plaintiff enters the room)

THE COURT: Sit down there. Youare still under oath.

I want to know why you want to discharge Mr. Schwartzenberg. Why?

MR. CATANZARO: We had an argument over at his office and one of the things was that the deposition, there was errors in the typing. So the other lawyer had me correct them so after I corrected them, that was yesterday morning --

THE COURT: Well, what's wrong with that?

MR. CATANZARO: Well, I asked Mr. Schwartzenberg what should I say to Mr. Healey should he ask me about the deposition, because Mr. Healey does not have the corrections, see. And he flared up --

THE COURT: Oh, that's nothing.

MR. CATANZARO: And he flared up and shouted at me, see, and he threw the whole -- something on the table, you see. So he told me everything was --

THE COURT: Well, that's a short time business. That's all that is. Now, what about Mr. Schwartzenberg, will you tell me what this is about the correction of the deposition?

MR. SCHWARTZENBERG: Your Honor, as I understand

it, I didn't participate in the corrections --

THE COURT: Who did? Somebody from your office?

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Who?

MR. SCHWARTZENBERG: When I say participated, I mean he didn't actually do it. Mr. Catanzaro made the corrections of his own. He just gave him the deposition to look at and told him what to do, where to make the corrections.

THE COURT: Were you present?

MR. SCHWARTZENBERG: No, I wasn't present, your Honor.

THE COURT: Well, you can't add anything. Was there another lawyer present there?

MR. CATANZARO: Yes, sir. The other lawyer of the same firm.

THE COURT: Who was it?

MR. CATANZARO: Mr. Cohen.

THE COURT: Mr. Cohen?

MR. CATANZARO: Yes.

THE COURT: Well, he is a member of the firm, isn't he, Mr. Schwartzenberg?

MR. SCHWARTZENBERG: He is, your Honor, and he is right in the building, too.

THE COURT: Get him up here. Where is he?

MR. SCHWARTZENBERG: Mr. Gargan knows where he is better than I do.

MR. GARGAN: He is with Magistrate Goettel in another case. I'll get him up here.

THE COURT: All right. See if you can get him up here. Have you got the deposition here, Mr. Schwartzenberg?

MR. SCHWARTZENBERG: Yes, sir. I'll let you look at it.

THE COURT: Let's get that.

MR. CATANZARO. Your Honor, I wanted to --

THE COURT: Let's wait until Mr. Schwartzenberg gets back. I will not listen to you unless Mr. Schwartzenberg is here.

MR. SCHWARTZENBERG: Here it is, your Honor (handing).

THE COURT: Will you mark this for identification, Mr. Clerk, as a Court's exhibit.

(Court's Exhibit No.1 marked for Identification.)

MR. HEALEY: While we're waiting, your Honor, if I may --

THE COURT: Mr. Gargan is out.

MR. HEALEY: Well, I think this is just a statement of fact that I would know.

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THE COURT: All right.

MR. HEALEY: It involves the case of Mr. Catanzaro against Central Gulf. Klein, Cohen & Schwartzenberg are the second attorneys.

B10

THE COURT: He had a prior lawyer?

MR. HEALEY: He already discharged a lawyer named Murray Bogoton. So we are working on a second set of attorneys here with Mr. Catanzaro.

THE COURT: Did you have a prior lawyer to Mr. Schwartzenberg's firm?

MR. CATANZARO: Yes.

THE COURT: Who was he?

MR. CATANZARO: Mr. Murray Bogoton.

THE COURT: Did you dismiss him?

MR. CATANZARO: Yes.

THE COURT: Why did you dismiss him?

MR. CATANZARO: He was not an Admiralty lawyer.

THE COURT: How did you happen to go into his office?

MR. CATANZARO: I was introduced to him by a friend of mine.

THE COURT: Was the friend of yours some client of this lawyer, this other lawyer?

MR. CATANZARO: He was a friend of his.

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to court.

THE COURT: What about it, Mr. Schwartzenberg?

MR. CATANZARO: And he told me, well, all right, once we get into the courtroom -- and I see how he was asking me the questions, he was supposed to bring out the fact --

THE COURT: Did he ask you questions yesterday to try you out?

MR. CATANZARO: Yes. He asked me questions.

THE COURT: Did you answer the questions?

MR. CATANZARO: Yes, I did.

THE COURT: Mr. Schwartzenberg, what have you got to say? This is a conflict of personalities apparently.

MR. SCHWARTZENBERG: Mr. Cohen had a conflict of personalities with him to begin with, and he discharged him a year and a half ago from this case. Then he wanted him back.

THE COURT: Wait. Let's go back. Do you agree that you discharged Mr. Cohen a year and a half ago?

MR. CATANZARO: Yes, I did.

THE COURT: And that meant Mr. Cohen, that meant your firm, I assume?

MR. CATANZARO: You see, your Honor, after I --

THE COURT: I'm a little bit concerned that something wasn't done about this by your firm before that

I sympathize with you, you have got to see our problem.

I have Mr. Friend coming up, I have spent a lot of money, somebody is paying me a lot to be in court. I am suggesting to the Court that I cannot consent to an adjournment of this matter unless the considerable expenses that have been expended by --

THE COURT: How much expense is now incurred? Approximately?

MR. HEALEY: No, not expenses -- just on this trial. Oh, I would have incurred the other expenses no matter what took place, getting ready for trial. I'm talking now, what has been done, I have spent just a day in court, a conference date in front of yourself, the day in court, this morning and Mr. Friend's expenses. It's going to be --

THE COURT: What would you estimate --

MR. HEALEY: $2500.

THE COURT: Well, that's it, Mr. Catanzaro. It costs money to switch lawyers while you are in court. You have caused various services to be performed not only by Mr. Healey, but Mr. Gargan's office, the United States Attorney's office here, which is a third-party defendant, as you may know. If you want to pay $2500, okay. Do you want to do it?

MR. CATANZARO: I don't have the money now.

THE WITNESS: Yes, just a few times.

Q Had he done that in the past, helped you with the lines?

A No.

THE COURT: Does that make any difference?

MR. SCHWARTZENBERG: Yes, sir.

Q He didn't run the windlass, did he?

A No.

MR. HEALEY: I object to the form of the question, your Honor.

THE COURT: Sustained. You are giving him his answer. You are giving him a no, it's a leading question.

Q Did he run the windlass?

A No.

Q Did anyone run the windlass?

A No, sir.

Q How as it running?

A By itself, running free.

Q Is someone always stationed there to operate or watch the running of the windless?

MR. HEALEY: I object to the form of the question.

THE COURT: Yes, it is leading again.

Q Who should have been running the windlass?

MR. HEALEY: I object to that.

you were in Vietnam?

MR. HEALEY: I object, because --

Q Yes or no.

THE COURT: Yes, I have sustained it twice, now you go on and take some other question, counselor.

MR. SCHWARTZENBERG: I'm asking for a yes or no, is all, your Honor.

THE COURT: That doesn't make it necessarily relevant.

Q Was it or was it not is the question.

THE COURT: You asked whether it was a similar situation.

MR. SCHWARTZENBERG: That's right.

THE COURT: Which is out of order.

Q Was the situation the same?

MR. HEALEY: I object, because he told us --

THE COURT: That's the same thing three times now I've sustained it. Get on to some other question.

MR. HEALEY: These people must determine if it is the same.

Q On any previous situation where it was similar to the situation where you were getting under way on October 13, 1970, at any previous situation, in all previous situations where they were similar to this situation --

THE COURT: You had him pulling in this rope, or hawser and coiling it up. Why don't you take up from there and find out from him, if you can, what happened if he knows.

Q Now tell us about the coiling, as his Honor pointed out to you.

THE COURT: He told about that yesterday.

MR. SCHWARTZENBERG: No, I meant the line. How the line ran from the starboard chock and the starboard rail to the windlass.

Q Explain to us where it ran and how it got onto the --

A It ran around the bitt and from the bitt around the windlass drum where Jackson was taking it in, and I was taking it from Jackson and coiling it up.

THE COURT: What was Jackson doing exactly?

THE WITNESS: He was taking it from the drum.

THE COURT: From the drum?

THE WITNESS: Yes.

THE COURT: And by that you mean what? From the winch? The drum on the winch?

THE WITNESS: The drum on the winch, yes.

THE COURT: That is what Jackson was doing at the time?

THE WITNESS: Yes.

THE COURT: And what were you doing?

THE WITNESS: I was taking it from him.

THE COURT: What were you doing with it?

THE WITNESS: Coiling it on deck.

THE COURT: Where were you coiling it, on the deck?

THE WITNESS: Right behind him, yes, on deck.

THE COURT: All right. You have got that far, now what else?

BY MR. SCHWARTZENBERG:

Q You told us yesterday you were working with the springline; is that right?

A Yes.

THE COURT: Yes, yesterday he told us, today the same thing. Don't go over it a third time.

Q Was the springline attached to the winch at one end before you even started to pull it in?

MR. HEALEY: Does he know? I thought he said he came up and they had it going. Would you get a foundation?

Q Did you observe any turns on the drumhead?

A Yes.

Q Of the springline?

A Yes.

say this, I am dropping that point at the moment anyway and rather than look now, can I look later?

THE COURT: All right. The last question is withdrawn about the number of crew, or whatnot, officers.

All right, get on to something else then so we can make some progress.

MR. SCHWARTZENBERG: I'm going to offer that again later.

THE COURT: Don't tell me what you are going to do later. Just go on and do what you think you can do now, what you can extract from this witness.

MR. SCHWARTZENBERG: All right, sir.

THE COURT: Proceed.

BY MR. SCHWARTZENBERG:

Q Do you know where the first mate was, sir, during all this --

MR. HEALEY: Do you know of your own knowledge?

B15 Q (Continuing) this unmooring?

A At that time?

Q Yes. Do you know?

A I believe he was on the bridge.

Q No, no. Do you know?

THE COURT: He asked you if you know.

A No, I didn't see him. I don't know where he was.

A I don't know if there was or there wasn't. I could only tell you what I heard and saw.

Q Did they give you $200 attack pay?

A Excuse me?

Q Did you get your $200 attack pay?

A Yes, I did.

Q Did you call up the government and send that back and say, I don't know of any attack? Did you return the money?

A No.

Q You kept it?

A Yes.

Q Well now, think, you kept $200, they got that ship out of there licketysplit, think, wasn't there an enemy rocket attack going on?

A I cannot say if there was or there wasn't.

Q You don't remember?

A No, I didn't see. I didn't see any rockets hit our ship or the vicinity of it.

Q The chief officer told you, you just said this, didn't you, the chief officer came down and woke you up and said --

A That's right.

Q (Continuing) we're under enemy attack, have to

get this ship out; right?

A That's right.

Q And were you people acting fast to get the ship out?

A Yes.

Q You were moving in a big hurry, weren't you?

A Yes.

MR. HEALEY: Now, if I may, your Honor, I'm going to try and use this blackboard (indicating).

THE COURT: I don't know. It's not a good thing. You haven't any photographer, have you?

MR. HEALEY: Yes, we have one of these Polaroid cameras. We can take a picture of that thing then.

THE COURT: All right.

Q Just try and figure out where everybody was. All right? Here is the bow of the ship, right? Do you follow me (indicating)?

A Yes.

Q Now, let's put back here, here is hatch No.1 (indicating); right?

A Right.

Q Just so we get the idea. Over here was that chock, that opening in the side where your springline went down; right?

Q On this bitthere (indicating)?

A Yes.

Q So when you get there it's tied on the bitt, and they use the drum to bring in your other lines; is that right?

A Right.

Q When you go to get the last line, one of your men had to take this thing, the loose end, and take turns on there; right?

A Right.

Q Who did it? Who put the turns on?

A Jackson.

Q Moses Jackson, the AB; right?

A Right.

Q That's his job, to put the turns on; right?

A Yes, but I have also done it.

Q I know that, but did I understand you correctly, it's normal, the job, the AB puts the turns on and then he starts leading that back to you, the ordinary who either coils it or flakes it by bringing it up and down the deck? Is that the way you guys usually work?

A Right. Yes.

Q Did you see Moses Jackson put the turns on the drum?

A Yes.

Q Were you watching him?

A Yes.

Q And you saw him put how many turns on?

A He had first put about three of them, two or three, and the mate told him to put more.

Q Can you answer my question? Did you see, I didn't ask you about conversations, did you see how many turns were put on with your eyes?

A Yes.

Q You saw three turns, did they start working the winch then?

A Yes.

Q Witn three turns?

A It was running.

Q That's what I'm asking.

A It was running.

Q Then Jackson is told, put on, and he puts two more turns on; is that right?

A Yes.

Q And they kept running?

A Yes.

Q So at that point you had the line coming down from your bit going around here, as we say, five turns,

Moses Jackson standing back here (indicating)?

A Correct.

Q Which way was he looking, do you know, out towards starboard?

A No, he was facing it.

Q He was facing right at it?

A Taking it in.

Q He is right behind the drum?

A Yes.

Q So Moses Jackson is standing here and he's taking that line as it comes off; right?

A Yes.

Q And is he moving it back behind him like I'm showing you (indicating)?

A Yes.

Q Hand-over-hand he is putting it behind him?

A Right.

Q And behind him was you?

A Correct.

Q About where were you standing, Mr. Catanzaro?

A A few feet.

Q About where my finger is (indicating)? Were you behind him?

A Right behind him.

Q And those are normally three unlicensed fellows like McCoy, Jackson and Catanzaro; right?

A Right.

Q And normally you will have an officer standing there giving orders; right?

A Right.

Q And on that day Mr. Friend was there to give orders; right?

A Right.

Q So when you were bringing in the springline on this day you had the same number of men in the area, McCoy, Jackson, Catanzaro, three unlicensed men and an officer, Friend; right?

A Yes, but with one exception. You're saying that McCoy was helping us with that line, and he wasn't.

B18 Q I didn't say that. I said in the area. You listen to me. I know what McCoy was doing, you don't. I'm going to read that later.

A But you had three men working on the line.

THE COURT: Wait, Mr. Witness. You will have to wait and hear the question. Don't interrupt a lawyer and vice versa.

Q I am going to correct it with you. We are both interrupting each other. I didn't say, understand, McCoy

Mr. Catanzaro. Were each of them within your vision, sir?

A Yes.

Q Would you please tell us what you saw at that time?

A What do you mean, sir?

Q What did you see in relation to Mr. Catanzaro and the lines?

A Oh! Well, he just -- the line just come up and his him on his leg and he flew up in the air and turned over a couple of times and then landed on his back.

THE COURT: All right.

Q Where did the line come from?

A It was coming through this chock here, coming up and going onto the winch drum.

Q How did the line fly off?

THE COURT: What is that?

Q How did the line fly and hit Mr. Catanzaro?

THE COURT: I don't understand that question.

Q You say the line hit Mr. Catanzaro in the leg and threw him in the air; is that right?

A Yes.

Q How did that come about?

MR. HEALEY: That's a conclusion now.

THE COURT: Yes. Sustained in that form.

Q Did the line come off the winch?

MR. HEALEY: That's a leading question, of course.

THE COURT: Yes, that is a leading question. You must conform to the requirements of evidentiary rules, and apparently it is very difficult for you to do it.

Q Tell us, sir.

A The line evidently had --

MR. HEALEY: I object to that, your Honor.

THE COURT: Don't say, "evidently" or give any opinion. You are not asked. All you are asked to do is to tell what happened at that time. Do you understand me?

Now ask your question once more.

Q What did you see, sir?

A Well, the line got stuck over the side of the ship, and it had these turns around the drum, and when it got stuck over the side it whipped backwards and forwards like this (indicating) and hit Catanzaro.

THE COURT: Now he waved his hand around. I don't know what that shows.

THE WITNESS: Well, the line, we call it back-lashed, sir.

THE COURT: Backlashed?

THE WITNESS: Yes, sir. That's what we call it.

THE COURT: Go ahead, counselor.

Q All right, sir, the line backlashed and hit Mr. Catanzaro; is that right?

A Yes.

Q What else did the line do?

THE COURT: If anything.

Q If anything, of course.

A It pulled Mr. Jackson down into the winch drum.

THE COURT: Into the winch drum?

THE WITNESS: Yes, sir.

THE COURT: To the head?

THE WITNESS: Yes, sir. Just pulled him, jerked him down into it, and he pulled himself back away from it.

THE COURT: Is that all, counselor?

MR. SCHWARTZENBERG: No, sir.

THE COURT: Well, finish it. You have had this man on for almost an hour.

MR. SCHWARTZENBERG: I have a long way to go, your Honor. I haven't started yet.

THE COURT: I don't think it is necessary to go quite so far, but, go ahead.

Q What is scorching?

THE COURT: What is the word?

MR. SCHWARTZENBERG: Scorching.

A That's when too many turns is around the winch drum and the line is taut that it burns, the winch keeps on going, it burns the line.

Q Did that happen here?

A Yes, sir.

Q Was anyone operating the winch?

A No, sir.

Q Who operates the winch?

THE COURT: He just said nobody was, now you ask him who operated it. Now, what sense is that?

Q Who ordinarily operates the winch?

A The boatswain.

Q Was the boatswain aboard ship?

A No, sir.

Q Where was he?

A He was in the hospital.

THE COURT: What was that?

THE WITNESS: He was in the hospital.

THE COURT: You don't know he was in the hospital. You weren't in the hospital, were you?

THE WITNESS: No, sir, but we took him and put him in the ambulance and he didn't come back.

THE COURT: All right. Go ahead. See if you can get to the end of this affair.

A Yes, I did.

Q What did you observe about the winch at the time of the accident?

THE COURT: At what time, please?

MR. SCHWARTZENBERG: Just at the time of the accident, your Honor.

THE COURT: And by the accident you mean what?

MR. SCHWARTZENBERG: To Mr. Catanzaro.

THE COURT: All right. Do you understand the question.

THE WITNESS: Yes, sir.

THE COURT: All right, answer it then.

A Well, the line was asmoking and there was nobody to shut the winch off, the throttle to the winches over on the port side of the ship on there, and you couldn't get to the throttle to shut it off.

MR. SCHWARTZENBERG: All right, I think that's all, your Honor.

THE COURT: All right. Now, cross-examination first by Mr.Healey, I believe, then Mr. Gargan.

CROSS-EXAMINATION

BY MR. HEALEY:

Q This unmooring operation started, as I understand your testimony, when the third officer, as far as you

here, and if the other guy was having trouble flaking he could help flake, he could do either of those things?

A Yes.

Q You walked over, you knew the winch was going?

A Yes.

Q You decided you weren't going to go to the throttle, you were going to help Joe; right?

A Yes.

Q Why did you decide to help Joe? Was he having trouble making a nice coil?

A No, sir. Whenever I got through and I started through, I seen the line was starting to go, so I run to give him a hand because --

Q You saw the line starting to tighten up?

A Yes. Seen it snatch out of Joe's hands, you know.

Q This line here snatched out of Joe's hands (indicating)?

A Yes.

Q The tail of the line started to snatch out of Joe's hands; is that right?

A Yes. Out of Mr. Jackson's, too.

Q Yes, sure, because they both have the same line.

A Yes.

Q So you are walking over; right?

A Yes.

Q And what you see is all of a sudden this tail, the loose end of the line, is starting to pull Joe --

A Not just like that, just --

Q Whipped Joe?

A Whipped, yes.

Q And Moses Jackson, right?

A Yes.

Q You decided to go to Joe, not to hit the winch throttle; right?

A I was too far away from it, sir.

Q You wouldn't have time to get to that winch throttle; is that correct?

A No, sir.

Q This happened like that (indicating), didn't it?

A Yes.

Q Something happened out of the ordinary, right?

A Yes.

Q YOu didn't know what it was at that time, did you?

A No, sir.

Q But this line started to offer resistance to the drum, it wasn't coming on?

A Yes.

Q And when it offered resistance to the drum did it start to surge off forward quick?

A Polyethylene lines do that.

Q Yes, that's what I am saying. With this polyethylene line something happened to stop that free movement of the line onto the drum?

A Yes, sir.

Q It wasn't coming on?

A No, sir.

Q And, as a matter of fact, it started to back off, surge off?

A Yes, sir. Smoking.

Q It really surged off. In fact, it was surging off, that it started to smoke on the way off; is that right?

A Yes.

Q So as that line surges off, of course it reacts here and the tail starts to pull through and these fellows are being pulled by it; right?

A Yes.

Q You saw that?

A Yes.

Q Now, if I'm not mistaken, any normal, alert man, like yourself, you didn't have time to do anything with that winch, did you?

Q So what you were doing was walking from the left side over to the right?

A Yes, sir.

Q And when you got behind the winch that's when you saw Moses Jackson right in this postion (indicating)?

A Yes.

Q Joe Catanzaro right in that position (indicating)?

A Yes.

Q And that's when you saw this tail start to surge off; is that right?

A Yes.

Q And then the accident took place?

A Yes.

Q You moved Joe out of the way?

A Yes.

Q And you and Moses just picked up where you left off and finished bringing in that line?

A Yes, sir.

MR. HEALEY: That's it. I have nothing further to ask.

THE COURT: Mr. Gargan?

MR. GARGAN: I have no questions, your Honor.

THE COURT: All right. Is there any redirect examination?

THE COURT: Maybe. Go ahead now with your next witness. Is he here?

MR. SCHWARTZENBERG: Yes, sir. I have to get him. He's outside.

THE COURT: Who is he?

MR. SCHWARTZENBERG: He is my expert, your Honor.

THE COURT: All right, call him, whatever his name is. Let's get him up here. He can't testify back there.

MR. SCHWARTZENBERG: His name, sir, is Captain Angelos Boulalas.

A N G E L O S C H R I S B O U L A L A S, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. SCHWARTZENBERG:

Q Capt. Boulalas, would you please tell his Honor and the jury what schools you attended and what your training was in reference to seamanship?

A Yes. After graduating high school --

THE COURT: Where?

THE WITNESS: That was in Greece.

THE COURT: In Greece?

THE WITNESS: Right.

A (Continuing) Then I graduated Nautical College in South Hampton, England. Then I followed the sea career beginning from apprentice.

THE COURT: You followed what, the sea?

THE WITNESS: Yes.

THE COURT: What did you do? What positions did you hold, or, what ratings did you hold?

THE WITNESS: I am coming up, your Honor.

THE COURT: What?

THE WITNESS: I'm explaining. I am trying to explain.

THE COURT: Please do.

A (Continuing) I am a master mariner. I started as apprentice and then followed up the ladder, third officer, second officer, chief officer and Master on ocean-going vessels involving all various types of ships, cargo vessels, tanker vessels, passenger vessels, refrigerated vessels.

I spent 10 years at sea, of which almost nine years as Master on ocean-going vessels, and now I am a marine surveyor and maritime arbitrator.

THE COURT: Where are you located?

THE WITNESS: My address is 900 Palmer Road, Bronxville, New York.

Q What is your office address, sir?

A My office is downtown New York, 26 Broadway.

THE COURT: What experience have you had, if any, testifying in court?

THE WITNESS: Extensive, your Honor.

THE COURT: What experience?

THE WITNESS: I have been used as an expert witness on various occasions involving similar cases, cargo cases, hull cases, damage to ships, injuries to seamen, heavy weather damages and anything that is connected with the ocean carriage.

Q Did you review the deposition which is the testimony under oath, sir, of the plaintiff in this and the witness McCoy, who has just testified, which was given under oath concerning the facts in this case?

THE COURT: Wait a minute. Are you talking about a deposition of McCoy?

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Why don't you say so?

MR. SCHWARTZENBERG: I said that, your Honor, before.

THE COURT: I didn't understand it then. It wasn't clear. The question now is has this witness, this proposed expert, read the testimony or deposition of the

numbers. I don't understand that one.

Actually the depositions aren't in evidence in full, are they?

MR. HEALEY: No, sir. They are not in evidence at all, your Honor.

THE COURT: Well, I will listen to objections after you have asked your full question so that Mr. Healey can know what you're talking about.

MR. SCHWARTZENBERG: This, your Honor, is the exhibit which wasn't marked, I don't believe.

THE CLERK: It has not been marked, no, sir. This is Plaintiff's Exhibit No.6 now marked for Identification.

xx (Plaintiff's Exhibit 6 marked for Identification.)

MR. HEALEY: No objection to that.

MR. GARGAN: No objection.

THE COURT: It is not in evidence.

MR. SCHWARTZENBERG: Now I am going to offer it in evidence, your Honor.

THE COURT: Well, go ahead, will you, do something so we can get on with this case.

MR. SCHWARTZENBERG: I have to wait for objections, your Honor.

MR. HEALEY: No objection.

MR. GARGAN: No objection.

xx

(Plaintiff's Exhibit 6 received in Evidence.)

THE COURT: Is there no objection to this, Mr. Healey?

MR. HEALEY: No, sir.

MR. GARGAN: No, sir.

THE COURT: Exhibit 6 is in evidence, whatever it is. All right, what else, counsel?

BY MR. SCHWARTZENBERG:

Q Did you review the personal injury report and the signed statements of the captain and various witnesses?

A I did.

THE COURT: Exhibit what?

Q Which is Exhibit 6.

MR. HEALEY: No, it's not Exhibit 6.

MR. GARGAN: The captain's statement is not included in that exhibit.

MR. HEALEY: The captain's statement is not in evidence.

Q Did you review the personal injury report and the reports of various witnesses?

A Yes, I did at the time --

THE COURT: Reports of what?

MR. SCHWARTZENBERG: Various witnesses.

THE COURT: Well, that is meaningless.

THE COURT: Did you review it before today?

THE WITNESS: That was yesterday, your Honor.

MR. HEALEY: Wait. Could I hear that? You reviewed this diagram yesterday?

THE WITNESS: No, it was a similar diagram.

MR. HEALEY: Do you have that with you?

THE WITNESS: No, sir.

THE COURT: Not that one. All right. This will have to be sustained then, the objection, if it is made.

MR. HEALEY: Not yet, your Honor.

THE COURT: Similar diagram. We don't know what a similar diagram is, counselor. That's an uncertainty.

Well, what do you want to do?

MR. SCHWARTZENBERG: All right, sir, I just want to give him this picture so I can get along here.

THE COURT: What is this?

MR. SCHWARTZENBERG: That's the photograph, Plaintiff's Exhibit 2.

THE COURT: You want to ask him about that, do it. Ask the question.

MR. SCHWARTZENBERG: Yes, I will, your Honor. I want to make sure I have all the exhibits that are necessary, that's all.

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Now, is there any objection to his expertise, gentlemen?

MR. HEALEY: I make no objection nor concession. On cross-examination I would intend to --

THE COURT: The questions on cross-examination including qualifications are reserved; is that correct?

MR. HEALEY: Correct, your Honor.

THE COURT: Same for Mr. Gargan.

MR. GARGAN: Same, your Honor.

THE COURT: All right, go ahead.

BY MR. SCHWARTZENBERG:

Q Sir, have you had experience in acting as a Master of a vessel in wartime conditions?

A Yes.

Q And various dangerous conditions?

MR. HEALEY: I object to the form of that question.

THE COURT: Yes. Sustained. I don't know what dangerous conditions are.

MR. SCHWARTZENBERG: Any emergencies.

MR. HEALEY: I object.

THE COURT: Same thing.

Q But you have had experience in relation to

wartime emergencies aboard ship; is that right, sir?

A Yes.

THE COURT: And in particular emergencies relating to what?

Q And in particular emergencies relating to rocket and bomb attacks, sir?

THE COURT: In respect of what?

MR. SCHWARTZENBERG: In respect to rocket or bombing attacks.

MR. HEALEY: I object to the form and would suggest he simply ask the captain what his experience is. You suggested to him rocket and bomb attacks.

Q Tell us what your wartime experiences were, Captain.

A I have been on several ships in which I was in command of vessels, or serving earlier as an officer on vessels.

THE COURT: In wartime?

THE WITNESS: In war.

THE COURT: Where?

THE WITNESS: I'm coming up, sir.

THE COURT. You are coming up. Well, come up now then.

THE WITNESS: Yes. I recall a case in Argentina--

THE COURT: Argentina?

THE WITNESS: Yes, your Honor.

THE COURT: What war was that?

THE WITNESS: In 1955 when Peron was overthrown. I recall where we had another case in 1958 in Cyprus when we were ordered to leave immediately because of an imminent attack. I recall another similar situation in Chile when we had to leave in a hurry. All ships in the port were ordered to leave because of a war that was about to break, and we were hearing bombs being thrown and everything else.

I recall a similar occasion in Uruguay.

THE COURT: What I'm going to do is this, gentlemen. It's now nearly half-past 12:00. I think you could, in an hour and a half perhaps, take some time and see if you can get reduced to partially, at least, in writing, this hypothetical question, and we'll come back, ladies and gentlemen, at 2:00 o'clock. I believe that that is a time-saving device. That's it. We are recessed until 2:00 o'clock.

Heed my previous instructions, ladies and gentlemen.

(Recess)

MR. SCHWARTZENBERG: All right.

Q Assume, if you will, Capt. Boulalas, that all the facts established in your review of various depositions --

THE COURT: Wait. That will never do. There is bound to be an objection. You will have to state what the facts are that he is to assume. He doesn't know what is in the depositions, and the jury hasn't --

MR. SCHWARTZENBERG: Your Honor, this is preliminary. I am going to get to the facts.

THE COURT: I know, preliminary may get going on the hypothetical.

Q Assume all the facts established by your reviews of the depositions of the plaintiff.

THE COURT: That is what I just said not to do, and counsel, do you object to that, sir?

MR. HEALEY: I object, your Honor. We have discussed this inside. He is asking him to assume facts that these people don't know, and it kills the question.

MR. SCHWARTZENBERG: I understand, I'm going to get to the specifics.

THE COURT: Wait. You are not going to go on with any such thing as a reference to what is in the deposition which hasn't been read. You will have to take such facts as would be presented to anybody to determine some

to merely observebut to direct the activities of the unmooring party --

MR. HEALEY: Now I object.

THE COURT: There was no such statement there at all, Mr. Witness.

MR. HEALEY: There is no such proof, and I would suggest the proof that we all know is that the government pilot was in charge. I renew the objection which is suggesting to this witness things not in evidence, and he is now suggesting to this jury things that are completely wrong. This man was not in charge.

MR. SCHWARTZENBERG: Your Honor, may I be heard? I never seem to be able to be heard here after an argument.

THE COURT: You were heard to ask a long question, but there was no proof that this mate was in charge of it.

MR. SCHWARTZENBERG: There certainly was, your Honor, and many times there was proof --

THE COURT: He was there.

MR. SCHWARTZENBERG: He was there in charge of this gang, that's what we are talking about.

MR. HEALEY: Not in charge of the operation and the way it took place.

THE COURT: I will let this witness go ahead and

finish his answer, but then they may move to strike it.

Go ahead, finish your answer and try to be as brief as you can.

THE WITNESS: Yes, sir. I find bad seamanship in that the officer in charge at the bow station was not observing the end of the line which is known to have an eye and which can catch on any protrusion.

MR. HEALEY: I move to -- excuse me, Captain --

THE COURT: Now wait. Don't interrupt him. Let's get through with it, then you can examine him.

THE WITNESS: And I find further bad seamanship in that the officer in charge did not give an immediate order for the windlass to stop.

THE COURT: That's all?

THE WITNESS: Yes, sir.

THE COURT: You have finished your answer?

THE WITNESS: Yes, sir.

THE COURT: All right. Is that all now on this witness? Have you got some other hypothetical question? Well, answer yes or no, won't you please.

MR. SCHWARTZENBERG: Yes, I will, your Honor. Yes, I do --

MR. HEALEY: Can I move to strike so much of that answer as --

Q In addition to what you told us on the assumption of the same fact that you just assumed, that I just asked you to assume, do you have an opinion whether or not the mooring party was adequate?

THE COURT: The mooring what?

MR. SCHWARTZENBERG: The unmooring party was adequate for the job.

Q Do you have an opinion whether that --

THE COURT: I don't know what that means.

Q Do you have an opinion whether on an unmooring party, Mr. Catanzaro and Mr. Jackson and Mr. McCoy was adequate?

THE COURT: In numbers?

MR. SCHWARTZENBERG: In numbers, your Honor. That's right.

A No, it was insufficient in numbers.

Q Why was it insufficient in numbers? What's your reason for that?

A The reasons being that I have heard here a suggestion of an enemy attack which means that that vessel was not unmooring in a relaxed attitude taking five minutes for each action, but you have to be alert and move quickly as possible which means that we have to have as many possible in order to let go your ropes and take them in without

jeopardizing the safety. And on that ground I must say that it was inadequate.

THE COURT: All right.

Q If other men were available for that party, would it have been good seamanship to send them up with that gang for the unmooring party?

A Definitely yes.

THE COURT: All right. Are you through with this witness now the direct?

MR. SCHWARTZENBERG: Almost, your Honor.

THE COURT: Well, please come to a head on it. It's now after 3:00 o'clock.

Q Would it be bad seamanship for the second mate, Mr. Friend, who was in charge of the mooring party, not to warn -- the unmooring party, I should say -- not to warn them that the tug was in the vicinity being used and -- would that be bad seamanship?

A Yes.

Q Would it also be bad seamanship --

MR. GARGAN: Does that suggest the answer?

THE COURT: Yes. Don't lead. Don't ask any more leading questions.

Q Assume then that the second mate, Friend, gave no orders concerning the windlass, that no one was operating

that windlass or winch, would that be bad seamanship?

A Yes, it's bad seamanship.

THE COURT: Aren't you about through on this now?

MR. SCHWARTZENBERG: Just a moment, Judge. I may be through, Judge.

Q Under an attack or threat of an attack such as we had here of an enemy attack, either a threat of one in the future or one actually occurring --

THE COURT: Well, what is your question.

MR. SCHWARTZENBERG: I'm just asking him to assume that, your Honor.

What more could be done to make it good seamanship in reference to the unmooring party, the handling of the lines, handling of the winch and the observation of the tug and the other lines?

MR.HEALEY: I object, your Honor.

THE COURT: All right. Read the question, Mr. Reporter.

MR. HEALEY: The objection is simply asking how to make it more safe, and there is no legal --

THE COURT: Listen to the question by the reporter.

(Question read.)

THE COURT: The objection is what again?

THE COURT: Well, make up your mind.

Q The order of the second mate, Friend, to put five turns of the springline around the drumhead, is that good seamanship under these conditions as described?

A It is bad seamanship.

Q Why?

THE COURT: It is what?

THE WITNESS: Bad seamanship.

THE COURT: Why?

THE WITNESS: I will explain to your Honor.

THE COURT: Well, do it.

THE WITNESS: I see there a diagram, a drawing on the board --

THE COURT: Nevermind. Don't have any reference to that drawing, sir.

THE WITNESS: Okay, I will give it straight. Five turns are sufficient to withstand the weight of the entire vessel. Five turns implies that a lot of strain would be attached to a mooring line, which means you cannot slacken. When you are taking in a mooring line after untying from the bollard of the pier there is no weight other than the weight of the line itself which is nothing.

So even with one turn you won't take it in, but with a second and a third you would have plenty. You put

were in your quarters. Would you please pick it up from there?

A Yes, sir. I was called by the Harbor Master and he said get ready to take your ammo ships off.

THE COURT: Wait a minute. Go slowly, sir, so that all of us, including the jurors, may hear. Now will you repeat your answer? What happened?

THE WITNESS: The Harbor Master called and said that we were under an attack, to get the ammo ships off as soon as possible. Just prior to answering a phone, I heard an explosion. At the time I didn't particularly associate it with an attack. So they sent a jeep down, picked me up and took me to Pier 5. This is about a 3-mile -- it's about 3 miles from my quarters to Pier 5. And once I arrived there I went on the ship and told them to get ready to get under way.

THE COURT: What did you do? I didn't understand what you said. When you got to the pier, what happened?

THE WITNESS: I got on the GREEN FOREST?

THE COURT: And what else?

THE WITNESS: And went up the bridge and told them to get ready to get under way, to let all the lines go.

THE COURT: Who was that said to, the captain, or the Master, or the mate, or who?

THE WITNESS: Yes, sir, to the --

THE COURT: To whom?

THE WITNESS: To the Master.

THE COURT: All right. You told them to get out of the harbor.

THE WITNESS: Yes, sir.

THE COURT: Where was the ship tied?

THE WITNESS: Stern end to Pier 5.

THE COURT: All right. Go ahead.

BY MR. GARGAN:

Q Now, Captain --

THE COURT: Are you going to ask questions now? If you are please do it. But you turned him loose and he has got down to the ship. Now ask him questions. I think it is better, if I may say so.

MR. GARGAN: I would like to show the captain this --

THE COURT: Is this in evidence?

MR. GARGAN: No, sir, but I would offer it after we identify it.

Q This is Third-party Defendant U.S.A. Exhibit D marked for Identification, and I ask you to tell us what it is and how it came into being (handing)?

A Yes, sir. I drew this. This is the area of

THE COURT: And then there is the dock shown, I believeit is Pier No.5, isn't it?

THE WITNESS: Yes, sir. Pier 5.

THE COURT: All right. There you have it. You may continue, Mr. Gargan.

DIRECT EXAMINATION CONTINUED

BY MR. GARGAN:

Q Now, Captain, this Exhibit D is a blow-up of the Pier 5 area of the port; is that correct?

A Yes, sir.

B49 Q Now, returning to your narrative wherein you were aboard the ship on the bridge and you had given orders, would you please continue telling us what occurred, what you observed and what you did?

THE COURT: What ship were you on?

THE WITNESS: The GREEN FOREST, sir.

THE COURT: All right.

A I told them to throw off all the lines and to hold the after bow spring --

THE COURT: Now wait a minute. You had better go step-by-step so we know what he is talking about, counselor. It is confusing this way.

Q Captain, when you arrived on the bridge what, if anything, did you tell the people on the bridge?

after you gave the orders to get under way?

A Well, I noticed some men up on the bow of the vessel. I didn't look back on the stern, but I did see the men on the bow and they were taking the lines in.

Q Your first order relating to the lines was what exactly?

A Taking all the lines except the springline, the after bow spring, and to hold it until the rest of the lines were in.

Q Tell us the purpose of holding the springline?

A Well, it gives me a little control of the vessel whereby I could come ahead on the engine and hold it alongside.

THE COURT: Alongside the pier?

THE WITNESS: Yes, sir.

Q Did a time come when you actually came ahead on the engine with the springline out?

A Not while the springline was on the pier. And with that springline I can let the stern set off a little bit, which I wanted it to do. And this was just in case the tug lost its power, just in case I needed the spring for any purpose.

Q While you were on the bridge of the GREEN FOREST did the tug actually arrive?

any cargo because they had been alerted, I suppose, to get ready --

THE COURT: You saw them and they were not moving?

THE WITNESS: No, they weren't moving. No, sir.

MR. SCHWARTZENBERG: Your Honor, I'm going to object. He supposes. I move to strike his answer.

THE COURT: Well, yes, strike it out as is. Just tell us what you saw.

THE WITNESS: Well, the ROBIN GREY was setting on the north side of the pier. It was not moving.

THE COURT: All right.

Q Were the hatches open in the ROBIN GREY, if you recall?

A I don't recall.

Q What cargo did the ROBIN GREY have on board?

A She had ammunition.

Q Now, Captain, there came a time when the GREEN FOREST started to move; is that correct?

A Yes, sir. I gave slow ahead command to put the engine at slow ahead.

Q Did you also at that time give any orders to the tugboat?

A I told the tug to come in as soon as he could

THE WITNESS: Well, they told me, the Harbor Master --

THE COURT: No, not what he told you. What you observed, if anything. If you observed it.

THE WITNESS: Well, he said to get the ships off as soon as possible due to this rocket attack.

THE COURT: Well, did you hear anything or see anything?

THE WITNESS: I heard an explosion prior to being called by the Harbor Master, sir.

THE COURT: Did you identify the location and nature of these explosions from your own knowledge?

THE WITNESS: No, sir. I didn't see the rockets coming in.

THE COURT:All right. Next question.

BY MR. GARGAN:

Q Captain, did you make any record of the conditions under which the GREEN FOREST was being undocked on this particular day?

A Yes, sir. Every time we took them off during an attack I wrote, "Emergency."

THE COURT: Look, you are not doing what I instructed you to do. Ask him what happened or what else you want to inquire about. If he doesn't remember then you

of it is afterwards? How do you know it is afterwards, and which part of it is? Will you please indicate on this with a paren which part you say is after?

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Just in paren, don't do anything else to it.

MR. SCHWARTZENBERG: Yes, sir. Well, it's so complicated, your Honor -- no objection. No objection.

THE COURT: All right. Received in evidence then.

(Third-party Defendant United States of America Exhibit A received in Evidence.)

THE COURT: You may read whatever part you believe to be relevant.

MR. GARGAN: Yes, sir.

THE COURT: Assuming that it is relevant.

Q Now, Captain, on page --

THE COURT: What are you going to do now?

MR. GARGAN: I am going to read from the exhibit and ask him to make some notations on that drawing relevant to these entries.

THE COURT: All right. Go ahead.

Q Captain, there is an entry on page 5 of this log which reads as follows: 1440, JDOC reported incoming at this time two rounds Pier 4.

reads as follows: 1442, which by the way is what time in civilian --

A That would be 2:42 p.m.

Q It reads, Mr. James, Harbor Master, reported that the first two rounds landed at the fork of the road between port doc, that's spelled d-o-c, and TWA.

Would you mark on this drawing Exhibit C where the fork in the road is?

A Do you want me to circle --

Q Circle the fork in the road.

THE COURT: And mark it with an arrow indicating what it is.

Q In fact, on the drawing it says fork in the road -- fork of road.

THE COURT: All right. Just indicate it with a circle around that area.

Q Approximately how far from the ship GREEN FOREST was this location just mentioned?

A It's approximately, I'd say, 2-1/2 miles, sir.

Q Now, Captain, just one more question. In the course of giving the orders to the various people involved in the undocking of this ship --

THE COURT: I haven't heard about any direct orders by this witness to anybody except possibly the Master.

Is that all it is?

Q Tell us who you gave orders in relationship to undocking the GREEN FOREST on this particular day.

A I gave orders to the third mate who was on the telegraph, put the engines slow ahead, and also I hauled in the wheelhouse and they hollered back tome, they repeat the orders back.

THE COURT: They repeated the order?

THE WITNESS: Yes, sir. Verification that he got the correct order. I told him to put a right rudder on. I don't recall how many degrees I told him to put on it, so that I could walk that stern away from the pier at the same time that I had the tug pushing the bow away from the pier.

Q And did you give orders to the tugboat as well?

A Yes, sir.

Q Captain, these various people to whom you gave orders --

THE COURT: What orders did you give to the tugboat?

THE WITNESS: I told him to come in and push.

THE COURT: All right.

Q To the best of your knowledge, Captain, were your orders carried out properly?

A Yes, sir.

Q I want you to tell us, on October 31, 1970, when you came aboard that ship as harbor pilot, who was in command for the unmooring?

MR. SCHWARTZENBERG: If he knows.

A The Master is in command of the vessel. I'm on there strictly as an advisor.

Q Who runs the unmooring? I mean, who gives the orders, is what we are talking about?

A I give the orders with the consent of the Master.

Q All right. Did you give the orders that day?

A Yes, sir, I did.

Q Were you the one who said, let go all the lines?

A Yes, sir.

Q Were you the one who would tell the Master, get the engines ready and put your rudder to the right?

A I gave all the commands to the helmsman and the man on the telegraph.

Q What I am talking about is not who is technically in command, of course the Master still owns that ship, it's his ship. But what we're trying to find out is who was the fellow who decided, let go the lines? Is that you?

A Yes, sir.

Q And who is the man who decides, now put your

Q At that time, Mr. Friend, what was your rating on board the GREEN FOREST?

A Second mate.

Q And on unmooring procedures did you have a post?

A I did.

Q What was it normally?

A In undocking and docking, and that sort of thing, yes, I had the bow.

Q On that day, October 31, 1970, did there come a time when the ship started to undock?

A It did.

Q Do you recall where she was moored?

A Yes.

Q Was it Pier 5, ammo pier, at Cam Ranh Bay?

A That's right.

Q Did you bring cargo into Cam Ranh Bay?

A Yes, we had a load of ammunition.

Q Had the discharge of ammo been completed sometime in October, October 31, 1970?

THE COURT: When was the unloading of the ammunition completed, if you know?

Q Do you recall? Because if you don't I'm going to show you the log and that will assist you. This is in evidence.

of the second officer to assist in the physical work?

A That's right.

Q Why did you do it?

A In this particular case because of the exigency of the moment. The special circumstances.

THE COURT: That was the emergency, is that what you mean?

THE WITNESS: That's right, sir.

Q And the emergency is that you were told there was a rocket attack?

A That's right.

Q To your knowledge, was the springline unsecured, let go from down on the pier?

A It was.

Q Did you men start to haul it?

A Yes, sir.

Q Did you follow the springline for a while -- let me withdraw that.

Did the springline, the end with the eye in it, did that go down into the water?

A That went to the water.

Q Did you men continue to haul her in?

A They did, but first I --

Q Wait. Just follow me.

up there on deck involving the springline?

A Yes. I was standing there watching the men bring the line in and suddenly it became extremely taut.

Q Let me interrupt you. It became taut. Now, what part of the line could you see?

A All that on deck.

Q Sir, when you say all on deck, is it correct that you were talking from where she came into the chock, around the fairlead and onto the drum? Is that right?

A That's right.

Q Where did it become taut? Which section? The loose tail, or in here (indicating)?

A I beg your pardon?

Q Where did you notice the tautness in the line? What section?

A The entire line.

Q From drum forward --

A From the drum to the outside chock, yes.

Q All right, that's what I'm asking you. When you noticed that, what, if anything, did you do?

A I ducked.

THE COURT: You did what, sir?

THE WITNESS: I ducked down on the deck, because experience has told anyone who has handled --

Q Did you see what happened to him?

A No.

Q Did you help the other fellows move Mr. Catanzaro out of the way?

A That's right.

Q Was the line brought in?

A The line was brought in.

Q Was the springline brought in, the exact same way it had been handled before?

A That's right.

Q Kept right on the drum and just led in?

A That's right.

Q You had no other difficulty bringing in that springline?

A No more.

Q Is it correct now that -- let me ask you, do you know whether there was an Army docking pilot on board?

A Of my own knowledge, I don't know.

Q Then I assume you were given no specific instructions by an Army docking pilot to do anything special, were you? You didn't even know if he was on board; is that correct?

A That's right.

Q This man is Mr. Waddell, Capt. Waddell, he has identified himself as the undocking pilot during this incident.

Q How long did you stay with Central Gulf after that?

A Perhaps a year.

Q You say you were in charge of the bow party, right, the unmooring bow party? Right?

A That's right.

Q Is that ordinarily the second mate's job?

A On this particular vessel it was.

Q In general it's not, though, right?

THE COURT: What difference does it make?

A Many vessels do have this setup.

Q Ordinarily isn't the first mate on the bow and you are on the after portion of the ship?

A As I say, many vessels --

Q In unmooring.

MR. HEALEY: I object. He has got an answer, now he's arguing.

MR. SCHWARTZENBERG: I didn't finish my question.

THE COURT: Yes, sustained. It is repetitious.

Q You say you completed loading at 1235, I mean, the vessel did?

THE COURT: Loading or unloading?

MR. SCHWARTZENBERG: Unloading, I mean.

THE COURT: What is your question.

MR. SCHWARTZENBERG: Unloading, sir.

A Not a bit.

THE COURT: You asked, now you have it.

Q How many turns did you order on the drumhead springline, sir?

THE COURT: Read that question, Mr. Reporter. How many turns, was the question.

(Question read)

A There were four or five turns.

Q Do you remember making the statement to the company, which is Plaintiff's Exhibit 6 --

THE COURT: Is this in evidence?

MR. SCHWARTZENBERG: Yes, sir, it is in evidence. Plaintiff's Exhibit 6 in Evidence.

Q Do you remember stating here that there were about five turns?

THE COURT: Well, he said five or six. That doesn't impeach him.

MR. GARGAN: Four or five.

Q You ordered those turns; is that right?

THE COURT: What's that?

Q Did you order those turns?

THE COURT: Do you mean each turn as the line came in?

MR. SCHWARTZENBERG: The number of turns, yes,

that many turns.

Four turns some way or another make the line more susceptible to jumping from the drumhead.

THE COURT: All right.

Q Now I am going to show you, sir, this is Plaintiff's Exhibit 9, which is the log that you were referring to before of October 31, and I ask you to read these entries on here, these six lines here (handing).

A Five lines, I believe, if I'm not mistaken. This is a resume. This is a resume of the Cam Ranh Bay Port time. Of the time we were in Cam Ranh Bay. We were there a total of six days, 10 hours and 36 minutes. Total steaming time, inside steaming time within the port was 5 hours and 24 minutes. Total time at the dock was six days, 5 hours and 12 minutes. Total inside steaming distance was 18 miles. Cargo discharged, 2,094 long tons. Loaded --

THE COURT: What was that cargo, sir, that you just mentioned?

THE WITNESS: The cargo that we brought in there we discharged 2,094 long tons and we loaded 462 tons.

THE COURT: Well, I'm asking you what the cargo was which you discharged?

THE WITNESS: Oh. Ammunition.

THE COURT: All right.

Q Very briefly, in your time in the Army, would you tell us what you did at your job?

A Mainly tugboat Master.

Q In October of 1970, where were you stationed?

A Cam Ranh Bay, Vietnam.

Q What was your job there?

A Master LT1957.

Q On October 31, 1970, where was the LT1957?

A Cam Ranh Bay, Vietnam.

Q At about 2:00 o'clock in the afternoon, approximately, where was the vessel?

A Tied at the end of Pier 3.

Q Did a time come when you were informed that the tugboat had a job to do?

A Yes, it did.

Q What were you informed to do?

A Proceed to Pier 5 to assist in the unberthing of the GREEN FOREST.

Q Were you informed the reason for this unberthing?

A Yes.

Q What was the reason?

A Rocket attack.

Q At that time did you personally observe any

A The bow of my ship was directly into the starboard side of the GREEN FOREST. The springline was leading aft, and leading across the bow of my tug.

Q Was there anyone standing -- who, if anyone, was standing on the bow of the tug?

A My first mate, Kenneth Weber.

Q What was his job on the bow?

A To supervise the deck seamanship, handling of lines.

Q Were there other people with Weber on the bow?

A Yes, there were.

Q How many, approximately, as you remember it?

A I believe there were two seamen.

Q Did the time come when you saw Weber do something?

A Yes.

Q What did you see him do?

A He threw the line leading up to the GREEN FOREST clear of the stem post where it momentarily snagged.

Q I take it then that this line was passing across the bow of your tug as you were pushing; is that correct?

A Yes.

Q Did you consider this to be a dangerous condition existing as you were working your tug?

A Not at all.

Q How fast was the GREEN FOREST going at this point?

A There was no excessive speed. I couldn't say the exact speed. Not excessive.

Q Captain, just so we are clear on the point, it was your opinion as you observed this operation that the line passing across the bow of the tug was not an unusual circumstance; is that correct?

A That is correct.

Q And it had happened on other occasions?

A Yes.

Q On this particular occasion for some reason it hooked momentarily on the bitt; is that correct?

A The eye hooked momentarily on the bitt. There was a sudden strain, then it went slack, my mate threw it off. There was no reason to believe anything was out of the ordinary.

MR. GARGAN: I have no further questions.

THE COURT: Cross-examination?

MR. HEALEY: Yes, sir.

CROSS-EXAMINATION

BY MR. HEALEY:

Q As I understand this now, Capt. Price, you had worked with Capt. Waddell at Pier 5 unloading ammo

A None whatsoever.

MR. HEALEY: That's it. Thank you, Capt. Price.

THE COURT: All right, Mr. Schwartzenberg.

CROSS-EXAMINATION

BY MR. SCHWARTZENBERG:

Q Was this line being across the bow -- would this line across the bow of your tug be a dangerous situation under an emergency condition?

A Not unless it snared, which it did.

Q But if it snared it would be?

A Well, apparently it would be. It did, and someone was injured I understand.

Q What did it catch on, sir?

A On the king post. The very forward-most part of my tugboat.

Q Is that the cruciform bitt?

A Sometime called that, yes.

Q And you actually saw it stuck there?

A Yes.

Q Will you describe to us, please, how it was around the cruciform bitt?

A The cruciform bitt stands upright and it has a slight horn right at the very bottom part of it which allows you to make a line fast. The horn sticking out something

cmds

Giuseppe Catanzaro,

-vs-

Central Gulf Steamship Corporation, 73 Civ. 672

-vs-

The United States of America

New York, New York
February 3, 1976--10:35 a.m.

(Trial resumed)

B65 (In open court - jury present)

THE COURT: Good morning. As I understand it, counsel for plaintiff here has one witness, a short witness as far as time is concerned.

MR. SCHWARTZENBERG: Yes, sir. Very quickly.

THE COURT: In the nature of rebuttal. Call him now, please.

MR. SCHWARTZENBERG: Yes, sir. Mr. McCoy.

H O W A R D S. MC C O Y, recalled as a witness by the plaintiff in rebuttal, having previously been sworn, testified as follows:

THE COURT: That will complete the testimony in this case. We will hope to have the summations today.

Proceed. You are still under oath, do you understand that?

THE WITNESS: Yes, sir.

the proof is before you.

THE COURT: Very well. We will have about five minutes recess, perhaps, and I will then rule on the requests to charge and present you with a -- well, let's present the special verdict now. I will ask my clerk to give it to the court clerk and mark it Court's Exhibit No.3.

xx (Court's Exhibit No.3 marked for Identification)

THE COURT: Give a copy, Mr. Page, if you have it, to each one of the three attorneys. In the meantime, I want to look over the requests to charge.

(Recess)

(In open court)

THE COURT: Do you each have the requests of the other two lawyers?

MR. HEALEY: Yes, sir.

THE COURT: I shall rule then on plaintiff's requests first. Are you ready, counselor?

MR. SCHWARTZENBERG: Yes, sir.

THE COURT: Well, please sit down then.

Paragraph 1 of the plaintiff's requests is granted;

2, except as charged;

4 is likewise refused except as charged;

5 is granted as charged;

6 is granted as charged;

B66 7 is granted as charged;

8 is refused except as charged;

9 is refused;

10 is granted as charged;

11 is granted as charged;

12 is refused except as charged, and 13 is not applicable and is therefore refused.

Now I will take up the defendant's. Are you ready for that? Is there anyone who isn't?

Paragraph 1 is granted as charged;

2 is granted as charged;

3 is granted as charged;

4 and 5 are each granted as charged;

6 is refused except as charged;

7 is granted as charged;

8 is refused except as charged;

9 is granted as charged;

10 is granted as charged as is 11 which is granted as charged.

Now, Mr. Schwartzenberg, are there any exceptions to my rulings on your requests? If so, state them.

MR. SCHWARTZENBERG: Yes, sir. I would except, your Honor, to the refusals to grant the requests that you

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have stated you refused.

THE COURT: All right. Now do you have any objections as to my rulings on defense requests?

MR. SCHWARTZENBERG: Yes, sir. I will make the same general objections.

THE COURT: Well that is silly.

MR. SCHWARTZENBERG: All right.

THE COURT: I don't know what you mean.

MR. SCHWARTZENBERG: All right, sir, I will specify if you like.

THE COURT: You certainly don't except to my refusals to charge. Well, what is --

MR. SCHWARTZENBERG: On No.2, your Honor.

THE COURT: Yes, any other?

MR. SCHWARTZENBERG: Yes, sir. No.1, No.2.

THE COURT: All right. That's all?

MR. SCHWARTZENBERG: No, sir. No.7. No.8. No.9, especially the latter portion, your Honor, the last paragraph. The last two paragraphs.

I have no objection to the first paragraph. 10, I object to that. No.11 as well, your Honor.

THE COURT: Mr. Healey, do you have any exceptions to my rulings on the plaintiff's requests?

MR. HEALEY: Yes, sir. Specifically looking at

Request No.1 of the plaintiff and parts of Request No.3 wherein the plaintiff has requested that you charge that plaintiff owed a duty, or the defendant owes a duty to provide a reasonably safe place in which to work. I except to that part of the charge and the basis is that there is no such duty simply to provide a safe place to work. The duty is to provide a safe place to work by either remaining free of negligence or not providing a seaworthy vessel.

There is no third obligation on the ship owner, just to provide a safe place to work. He must either breach a responsibility in negligence or in unseaworthiness. There is no third obligation oqn a ship to provide just a flat unconnected safe place to work.

The concepts of negligence and seaworthiness are quite different. There must be that business of fault in negligence or unreasonableness and unseaworthiness.

THE COURT: Very well. Anything else?

MR.HEALEY: And I would note an exception please to your Honor's charge as indicated. I have no other exceptions or requests as to the plaintiff's requests to charge.

THE COURT: How about the defendant's? You mentioned that, didn't you?

MR. HEALEY: Yes, sir. On the rulings that

over if he felt he had to do some other work on this walkie-talkie, or maybe put himself on the winch controls where he could have prevented this accident.

But, you see, the time is important because he did have time to do it. As I stated before, and I would like to reemphasize, what caused this accident was not the eye of the line catching, that wasn't what caused it. It was all these conditions that existed for a long period of time. In some cases for two or three days or more of the inadequate personnel, and more specifically at this time when they had the time when I brought out to you the time it took the port captain, the pilot to come aboard and do what he did. I brought that out for a purpose because they had time to get there from another part of the ship. There was no big problem about that.

These other guys were probably sitting around smoking. That doesn't mean because of a threat of war, I'm sure you know, that men go about their regular duties. I'm sure the people in the kitchen were cooking in the galley and cleaning up, and I'm sure that there were other AB's sitting in the back smoking, and what have you, and shooting the bull, and maybe doing some odd --

THE COURT: Listen, there is no proof about that at all, counselor. That is pure speculation.

Disregard it, members of the jury.

MR. SCHWARTZENBERG: Your Honor, there was testimony then with --

THE COURT: I told them to bear on the facts and the same thing applies to you in your summations, counselor.

MR. SCHWARTZENBERG: Any of these things, of course, is attributable to the ship owner, anything that any member of this crew did wrong, and that will include not only Mr. Friend, the second mate, but anything the Master did wrong in not replacing personnel, or in ordering other personnel up to the bow with Mr. Friend when he gave the original order to bring in the springline.

These orders were given on the ship and carried out by the ship, and he told you, Capt. Waddell, that he has no say on the matter, the captain can change any orders and do anything he sees fit in reference to these lines, and specifically the springline.

So the captain could well have ordered other men up there and told Mr. Friend to get him up there in giving his orders. And he had time to do that. It took Mr. Waddell, Capt. Waddell, even time to get out of the jeep and come up to the bridge. You can imagine, up the gangway, and so forth. And when he's on the bridge the captain had time to go ahead with the orders and they could have been

carried out very easily.

Now, the fact that they didn't replace -- the captain didn't replace, order replacements, or the mate, or whoever was to do it, is important. And I think you have to consider that. In addition to all this other business about the turns in the line, because they are all part and parcel of the same thing.

If that hadn't occurred to begin with then there would have been no problem at all. There wouldn't have been any sort of accident, because they would have had adequate men, they would have had their five men up there like they used to get. Even in an emergency that's the point that you have to keep in mind. Because the defendants are trying to make this as an excuse and saying this is an unfortunate accident. That's not so at all.

That doesn't mean that because we had a threat of an attack and a couple of rockets dropped, which they were doing every day in Vietnam I'm sure, that's just common sense, that they have to rush in such a manner and with inadequate personnel and these five turns and all these other things and have this poor unfortunate man have this accident. Because it's their responsibility.

He entrusts himself to the care of the ship and the officers of the ship when he goes aboard. In fact,

don't forget whatever bonus, little bonus he may have gotten, you can know what the ship owners were getting. Who carried the cargo.

THE COURT: Well, there is no evidence about that. You are constantly getting into speculation. Please stop it.

Disregard these speculative statements.

MR. SCHWARTZENBERG: Now I would like to point out to you another fact, that the defendants had every opportunity in the world here, the defendant, I should say, not Mr. Gargan there, he is just here to present some testimony. The defendant had every opportunity to bring in here an expert witness to counteract the question or questions I asked Capt. Boulalas.

MR. HEALEY: That is an improper statement, your Honor.

THE COURT: Yes, you may disregard that. The defendant, I shall charge you, is not required to prove or disprove anything. The burden is on the plaintiff here. No more remarks like that, counselor, please.

MR. SCHWARTZENBERG: Ladies and gentlemen, all we have to show you is just one thing that these defendants did wrong, this defendant did wrong, or one way that the ship was unseaworthy. That's not negligence now, either.

And even just the most minor kind of thing that's wrong. And that's sufficient for us to win our case.

I started to tell you before, and I dropped it then, that anything that not only the second mate did, or the captain did, but anything that even Jackson did wrong up there. For example, if turns could have been thrown off from the five, although it was difficult, but if somebody was on the winch controlling it, or if somebody was holding the line, the turns, they could be eased off this as the second mate, Friend, told you.

It wasn't done in this case, and it wasn't done in this case because no one was watching. And, in any event, if somebody was on the controls there would have been no problem. Just take one of those turns out, they slip off easily. Even put in emergency it could be done that quick. Can be brought off. And that will cause the slack to take up so it won't snap or pop.

In other words, what I'm saying here to you is don't be misled by the so-called danger or emergency. I would have to tell you that there is a famous saying in a case of a similar nature many years ago --

THE COURT: No, don't quote cases at all, counsel. That is a matter of law. It is irrelevant here. This case depends up on the facts as shown.

MR. SCHWARTZENBERG: In any event, danger compels precaution as Justice Holmes said many years ago in a speech.

THE COURT: Disregard that, members of the jury. The Court will charge you on the law.

MR. SCHWARTZENBERG: This is not law, your Honor, it's a speech that was made --

THE COURT: Well, it is law. It is out of some Supreme Court Justice.

MR. SCHWARTZENBERG: The precaution necessary under this precaution -- I don't think there was that much, no matter what the defendants did to try to prove it, putting all these witnesses here. Because there wasn't such a great danger the day or two days before. What was such a tremendous rush here now that they couldn't take another minute or two minutes? Just to have adequate personnel? And to make sure that someone was at the controls of that winch?

I say that that alone is sufficient for us to prevail in this case.

THE COURT: Your time is nearing to a close, counsel.

MR. SCHWARTZENBERG: Yes, sir.

Now, your main function here, ladies and gentle-

Now, with all these things in mind I'm going to --

THE COURT: Your time is almost up, counsel. Two minutes.

MR. SCHWARTZENBERG: I'm going to ask you, ladies and gentlemen, to remember one thing. Mr. Catanzaro has come to you, to this court, seeking justice as has the defendant Central Gulfstream Ship Company, represented by Mr. Healey, but nonetheless you are going to hear an argument from them now and I want you to bear in mind throughout the rest of this discussion, or summation, that his Honor asked you to keep an open mind until you heard all the summations and hear his charge. Talk it over with your fellow jurors, and I am sure you will. And I am going to ask you to bear in mind that this is the only day in court for the plaintiff. Of course, for the defendant, too.

THE COURT: Yes, it is the only day for the defendant, too, so get on with this, please. Come to a conclusion.

MR. SCHWARTZENBERG: Yes, sir. And I'm going to ask you now, after you have heard the rest, to go out and carefully consider the facts that I have pointed out to you. Anything else that you may remember. And I am sure you are going to come back with a verdict for the plaintiff.

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Thank you.

THE COURT: Very well. Now, before Mr. Healey commences his summation would you give him all the exhibits that you have there? Yours and anybody else's that you have.

MR. SCHWARTZENBERG: Yes, your Honor.

THE COURT: So that he may have them available if he wishes.

Mr. Healey for the defendant shipping company.

MR. HEALEY: If it please the Court, Mr. Schwartzenberg, Mr. Gargan, Madam Forelady, members of the jury.

Before I start, I have just a couple of preliminary remarks so that you will know what I'm about.

I have an opportunity, of course, to comment on a few of the things said by Mr. Schwartzenberg. I am going to reserve my remarks about his statement until the end of my closing for two main reasons. One, I think that I will cover most of it in the discussion of the facts with you, and, very frankly, secondly, it's awfully hard to come to grips with some of the things that are said because I found that there are inconsistencies taken, he sloughs over facts. The main one is he will say there is no emergency, this is a put-up job, nothing is happening. The other time he turns around and he says to you, under this emergency

I could well understand why plaintiff would try to tell you there isn't any, because he knows that if these men were acting under pressure the ordinary standard does not apply.

These men did not have all day to line people up on deck, to distribute the jobs as usual. To stand there and wait till the line was up and somebody dried it off and wrapped it up. They were acting under extreme pressure. And this is no magic the law holds. This is common sense.

If I were to say to you people that I'm going to cite you and you and you for contempt because you weren't here yesterday, you got here every other day, but you weren't here yesterday, I think you would all say to me, are you nuts? Didn't you look out your window?

Circumstances do change the responsibilities and duties we have. Nobody expected you people to be able -- I didn't get here. Those circumstances do affect the ordinary discharge of our duties. You people have a duty to get here. The Court does. Counsel does. But circumstances changed. And I think that Mr. Schwartzenberg knows that that attack changed all the circumstances and therefore he refuses to face up to the obvious facts.

He says to you, oh gee, there were probably rocket attacks going on for three, four days before, five or

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six miles away. That's speculation, and you have heard it is not proper. It is misleading. It should not be done. And the answer is not only is it speculation, it is incorrect.

You can review all of these records. We have heard all of the testimony. His own two witnesses, they heard nothing about any attacks earlier. There was no warning of an enemy attack.

Now, Mr. McCoy and Mr. Catanzaro pocketed their $2 hundred bonus for an enemy attack saying, no, there was nothing going on. But I think that if you just look at these facts carefully you will see that not only was there an enemy attack, but there was an attack directed right at the GREEN FOREST and the ROBIN GREY and that the actions of Capt. Waddell, Capt. Price and the men on the deck of the GREEN FOREST frustrated their attack.

He says it only lasted a few hours. Well, as we go over this you will see the only reason it lasted for that small period of time is that these men were successful in moving their vessels from an area of danger. You had the Army log. I didn't prepare it. Nobody prepared that for this case. Those men are at war and they keep a log and they know just what's going on. And there are no signs of such hostilities before, a little before 3:00 o'clock that

afternoon. Then you heard the two rounds were noted.

Now, that doesn't mean that those are the only rounds, but we can document, you see, this attack fairly well.

B71 Two rounds were noted, and I'm going to refer you people, if you wish, to this Exhibit C of the government which showed us the area. There's a large harbor, ship out here, some tankers, down the other end are these two ammo ships and an ammo pier. Two rounds landed at the fork of the road, and Capt. Waddell showed you just where they were. He drew a circle around it. They are down shooting towards the ammo installation.

The log of the GREEN FOREST also shows that they noted an explosion subsequently off the starboard quarter of the ROBIN GREY. Common sense, somebody's trying to zero in on those two ships down there. Two rounds here (indicating). Now they're getting close.

Then what we'll discuss later, these men get the vessels out of here and out beyond range, and the attack ends and somebody would try and tell you this was some kind of joke going on, some fellow discharged his rocket launcher while he was cleaning it, or one of these stories. They were shooting at those ships. They were trying to zero in, and these men got them out. There was a real attack.

You saw Waddell and Price. Five-hundred thirty-nine ships up to this point those men took out. They took a lot out under emergency situations. They knew what a rocket attack was. They were both in the Army. They served there for, one fellow nine months, and the other fellow longer than that.

Listen, I'm not taking anything away from Catanzaro. He went over there, he pocketed big bonus money. He's in and out. These are the fellows who were there working. They were not sunshine sailors or weekend patriots. Waddell and Price were involved. They knew what was going on and they told you. You size them up.

Did they come in here to tell you a funny story or the truth? You're told by the Army there's an attack, get the ships out. Waddell spots two rounds, people on the GREEN FOREST see a round coming in near the ROBIN GREY. These men got that vessel out and then the attack ended, and I'm suggesting to you there's no way to get aroud the proof in this case.

The ROBIN GREY and the GREEN FOREST were coming under enemy rocket attack and they had hatches jammed with ammunition, they were told to get out, and they did get out.

Mr.Friend also should know what it is about. Without going into great detail, he was a man of some

experience on this type of thing. He told you he had a vessel torpedoed under him in the Second World War. Under enemy attack in Korea. This fellow has been where the action is and he knows what it is. He was a cool head. He judged there was an enemy attack, there's no way of getting around it.

It reaches a certain conclusion. There was an attack, and then there's an incidental conclusion I think common sense tells you why has the plaintiff tried to make believe there isn't? Because anybody knows that under circumstances like these you can't fault men when they act quickly and carefully as they can when they are still acting quickly and under emergency procedures.

You must measure what they did by the circumstance within which they did it. Now, at this point a temptation I will overcome, but I am tempted almost to say, sit down now because we have seen what's taking place. You have seen an enemy attack, you have seen the men who were there. If you can't size-up these men as mature seamen who did the best they did, then I misread those men.

But nonetheless we will talk about what the plaintiff claims should have been done under these circumstances. He said to us during the trial and this morning, we didn't have enough men there. Friend, in so many words,

he's asleep at the switch up there, he's not doing his job. You got too many turns on that drum. You have nobody on the controls.

Each of these as we discuss, I think the facts show, just do not hold water. And surprisingly enough, each of those were not really borne out either by McCoy or Catanzaro. McCoy and Catanzaro said we were doing a job, one single job, taking in the springline. Now, we're not talking about the other lines or what they did. McCoy brought in the port side lines by himself without any difficulty. This is all over and done with. Nevermind how many men you would need there to take in all the lines, or one, or paint your ship.

How many men did you need to bring in the springline? McCoy said three. And I'll recall it to you. I said to him, well, you would need three men, Mr. McCoy, like, say, Mr. Jackson, Mr. McCoy and Mr. Catanzaro? He said, yes, that's what you would need. And I said, you did have McCoy, Jackson and Catanzaro? He said, yes.

He did not try and tell you there were too few men for that job. The only fellow who tried to say it at one point was Capt. Boulalas who was paid to come in here and offer an opinion, a man who had never been in Vietnam, a man who five years afterwards is sitting here comfortably

deck men. So the fact that two were gone, there's no word that there were not enough to run this ship. As you heard, they continued to run the ship, they took it out. There was a sufficient crew to operate that vessel.

Then you heard this talk, well, you should have gotten the men from the stern. Nobody told you who was there, how many were there, what they were doing. But if you took the men from the stern, how do you get the ship out with four lines still tied in there?

This is one of these, if you do you're damned, if you don't you're damned. It's silly. Plus the big thing is we have indicated already in discussing the attack this was a surprise attack that started minutes before this occurrence.

Now, Mr. Catanzaro, he has admitted to you he is over there, he has a very favorable pay scale when he's there. He's a lot better off than the soldiers who have come back with a bullet in them and no big bonus. He also has these other advantages that unless the Army -- Boulalas spoke to us about this -- unless the Army declared an emergency the captain of the GREEN FOREST had to let all men go on leave who weren't on watch. And Boulalas said that is no instance of bad seamanship. A captain's hands are tied.

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These men join the ship, the powerful union

behind them insisting on big bonus money and also that they get all shore privileges, and the Army, who is the only one who could have said there is an emergency, keep them on, didn't. There's no way to keep them on.

So all of this talk about you had all these other men about is just not borne out by the record. It's straying from the facts we have, and I would suggest to you you people are entitled to say, well, if the plaintiff will not discuss this case with us on the facts, then perhaps the facts don't support him. He had all day to try and develop what he is now talking to you about, and he did not.

If he would argue, well, the Army should have known of the emergency, we can drop that right now because he is not suing the Army. It's conceded the Army ran the port, not the GREEN FOREST.

Any shortcomings -- I see none here to blame the Army -- but any shortcomings you find in the Army's not giving warning or something is not a basis on which you can blame the GREEN FOREST.

Now, we have already indicated the special circumstances made it very difficult to wait till a full crew was up on the bow. We have also indicated, however, that you have got to look at this case at only what was being done at the time. It was the springline. Catanzaro and McCoy

with two men, three or four lines in with no difficulty. They got the springline in with no real difficulty up on their ship. It was something that took place on the tug that was the only snag. It wasn't anything wrong with their procedure.

Now, the proof of the pudding is in the eating. They did it and they did it without any difficulty on their ship. Something happened between Price and Waddell. Something which I say, given the circumstances, is not even fault on their part. But if it is it does not lay a basis for blaming the GREEN FOREST. It would be the Army's fault.

Now, let's remember what Friend did. He was doing four jobs. He wasn't doping off. He's on the walkie-talkie in communication to keep things moving. He himself, as you will recall, was watching the men. He knew there were five turns on. He wasn't asleep. We'll talk about that in a minute. Friend's testimony as to the five turns.

So he was watching what his men were doing. He was giving orders. They all said it. He was giving orders. He was doing his job. And Catanzaro said he helped with the lines. And Catanzaro said that's not his job.

Catanzaro said he was doing more than his job. Those are Catanzaro's words. He was doing more than his job. And now they attempt to fault the man. Because they can't

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find any real basis for blame here. They say, well, he wasn't watching the springline. Well, the facts are clear, agreed to by everybody who commented upon it. The springline could only be seen for a short period of time. Once it moved past about midway on the tug. The tug was at the perpendicular to the ship. Once that line moved past the wheel of the tug it disappeared from Friend's sight.

Waddell and Price both said we did not want Friend to assist us with that line coming through the water. Price could see it. You remember, he had a man on the bow of his tug. He was watching it. They requested no help from Friend. They had done the job hundreds of times, and they knew what they were doing.

So Friend had no responsibility to try and watch the line, which he couldn't see anyway. Waddell would have been a fool to say, Price, you watch the line. Or say, Friend, you watch the line. Price, ignore it. Because only one man could see it, Price.

So you cannot fault the man for doing what could not be done, which was not his responsibility. And in any event, as you recall on his own again doing more than asked he watched and told them, well, it's cleared the wheel, it's cleared the propeller. He did all that he possibly could do.

Keep in mind, of course, that these men were not

given the option of stopping the operation and moving the tug off until the line came in. Waddell in command said, go ahead, to Price. There was no time to stand by. A few seconds, a few seconds is enough to have a rocket hit that ship.

Now they get to this business about five turns, and they say, well, all right, even if it was an emergency, which is one of the alternatives, or even if Friend really was doing all you say, they never should have put five turns on it. Well, make no mistake about it. Friend said, yes, there were five turns, and my recollection of his testimony is he relied in great part on Moses Jackson. McCoy said Jackson was a good seaman. But Friend didn't back off and try and hedge.

Five turns were right, and if they weren't five turns he would have had them put five turns on, because he had a specific reason for five turns. Now, to try and judge, and I think we all understand what five turns mean, you have got an empty drum and one turn, according to everybody, wouldn't do a thing, it would slip. Three turns a little better, it would still start to -- four turns, five turns, less slippage and more of a steady pull.

Now, McCoy gave you the reason he felt five turns were no good. It could jump off the drum and get clogged

between the turning machinery and cut. It didn't happen.

McCoy did not tell you five turns would freeze the line on the drum. He knows it wouldn't. He knows it could surge. He said the only reason he thought it would be wrong for something that never happened, so forget it. As far as McCoy is concerned, it's right.

B73 Now, what about Jackson? He put it on, he's a good seaman, he knows what he's doing, he handles lines by himself. As far as you can tell, Jackson himself knew what he was doing and was pleased with it. There's no complaint here from Jackson.

Now you get to Friend, and I think he gave you the answer. They're bringing in the last line, they have got to get away, they don't want slippage. Put five turns on, he either says, or allows Jackson to do it because the line would come in. Then he explained to you surging with five turns is no problem. It's holding as Jackson was standing there. The end is coming off. All he need do is flip it or place his hand over those five turns to take pressure off the drum and it will surge. And he told you, and nobody contradicted him.

They put McCoy on this morning to say a few meaningless things, but McCoy doesn't contradict this, five turns can be easily surged. It take no great skill and no

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great strength.

Now, Boulalas and McCoy then said, well, the practical way to test with five turns, the practical way is did it surge? We can end this academic discussion we're having as to whether seamen would like three turns, five turns, eight turns. What they want is a drum and line that will come in and allow surging.

Now, Friend said it would surge. No doubt about it. But was he right? Well, all you have to do is recall what Howard McCoy said to you, when it hung up it surged right off there. It surged. And it worked.

Now, tie in Capt. Price on the tug. The big eye comes along, bounces up, catches on this cruciform bitt, he called it the horn. Rare. Never anticipated. Hadn't happened before. But those men unconsciously practicing good seamanship had made allowances for this. They didn't ignore it, because it immediately went slack.

The surging up on the main deck played out the line. It went slack, and Price said his man went over and just threw it off. What did they do on the main deck? They didn't change a blessed thing. They continued taking the line in.

Now, you got some talk that I don't understand. This talk about something about running it up on a bitt, the

line. That line as it came on you should divid into two sections. It came through the chock, went up to a fairlead which is just a revolving head so it can come on back to the drum, then went five turns on the drum.

Now, that section of line is under pressure because it's pulling. The other section of the line is the loose tail not under pressure. There's no doubt about it, it's the loose section that was involved in the accident. McCoy said it. He saw it with his eyes. We drew it on the board. They erased it upstairs, but we have a photograph of it here, if that's any help to you.

The loose end of the line with the surging played out. So this talk about you should have had something running, something had nothing to do with it. Again either confusion or an attempt to mislead. We're talking about the loose tail. Now, did it surge improperly? Well, so far we can tell it surged, Friend said five turns can be handled easily, the man on the tug says it worked perfectly, and we got it off.

What happened to the tail? It wasn't whipping around killing people. It hit Jackson in the head, as it surged. And he says in his statement, and it didn't hurt me. So it's surging through there just as they want it. Three turns. What he's telling you, less friction, more surging,

a greater whip.

Then maybe we would have Jackson hurt. But now this thing comes through surging as it should and nobody is being subject to a terrible blow. It worked perfectly. You can sit and argue with a fellow that there are a million other ways to do it, but the answer is, look, did you do it the way a seaman is supposed to do it? Did it work? You have got to say, yes, yes, to both of those. And do not be misled that there's something up in front here with bitts and the like.

We're talking about the loose tail and how it acted, and they have told you how it acted.

The last thing he said, no one on the winch. There's some confusion on that and you can decide it. There are three men there and you need three men for that job. Mr. McCoy has stated that he was just walking over and coming on the scene, he's passing the winch, he sees nobody in control, he decided he wouldn't go there, he said I'll help Catanzaro who's having trouble with the line.

This is something you have to keep in mind. The other guys got the lines in alone without trouble. Maybe Catanzaro wasn't doing his job right.

But McCoy decides, I'll go to Catanzaro --

MR. SCHWARTZENBERG: No proof of that, your Honor.

THE COURT: Well, the jury will determine what the proof was.

MR. HEALEY: McCoy decides, I'll go to Catanzaro. He does not see any need to go to the winch at all. That's important. But if you want to read his statement he has himself in a completely different spot when he gave a statement a couple of days after the accident. He told you, he came in here and said the capstan is the same as the winch. He has Jackson on the capstan, "I was coiling the line" says McCoy.

This is different than he told us now, "and Catanzaro was keeping other lines cleared." Completely different story.

According to what he said that day, the three of them were there and they could have done whatever they wanted. He's coiling the line, not Catanzaro who is walking around in the line according to the statement. Moses Jackson is taking it off.

These men purposely, intentionally decided there was no need to put somebody up on that winch control. This is not a case you couldn't, it's a case they determined not to. And why? We went through this with Boulalas and some of the other men. Obviously to bring your line in that winch drum, since it comes over the top is turning in a counter-

clockwise direction. Reeling the line in.

Now, when it starts to surge you have got two movements. The drum is still going counterclockwise and now the line starts to go off it. So you have got friction. The drum moving in a direction opposite to the surge. And common sense would tell you, fine, that creates some friction that controls the surge.

I say, and I recall to you that Boulalas agreed with me, you have two options if you are on the winch control. Put it in neutral, or put it in reverse and start running it clockwise. That's all, just two options.

Under these circumstances to do either of those would aggravate the surge and make it uncontrollable. Put your control into neutral, the drum no longer rotates and now there's less resistance. Put it in reverse, not only is there no resistance, it's forcing the line out.

B74 So picture what happens to the tail as you cut down the speed or you increase the speed of your surge there's a greater reaction on the tail, and Boulalas agreed with that. Now we say, well, Capt. Waddell said it would be a safety factor to have a man on the controls. Capt.Waddell would have been the biggest fool and liar in the world to say it wouldn't be a safety factor. It would be a safety factor to have the moving parts painted yellow. It would be

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a safety factor to write "No smoking" up there. There are millions of safety factors.

Your question here is has it got anything to do with the accident? He didn't pursue it with Capt. Waddell. Happy to take a meaningless answer to try and build an argument.

Next question is would it have been a safety factor that could have affected this occurrence? I suggest to you, no, because there are two options, and neither of them would have done a thing. This isn't the case of a man being sucked into the winch where you want to turn it off or something like that. Sure it's a safety factor. But one that has no connection with this.

Mr. Friend was emphatic on that point, too. I would suggest to you that the fact was despite the bilateral approach here by plaintiff's counsel there was an enemy attack, they were under Army orders, they were told what to do and they did it as best as any seamen could do, and you must judge what they did by that emergency and that should be the end of this case.

Then you can run through each of the faults that they tried to assign to the GREEN FOREST and you will find that Friend was not a fool and not paying attention. You will find that there were the right number of turns. You

will find that nobody could have done anything by standing holding the handle of the winch. And when you get through with all that I would suggest to you, if you were to look for any fault you could always say, well, the Army tug should have had somebody with a big stick there.

I don't think that's a fair burden to put on the Army. But if it was to be done it doesn't affect the case of Catanzaro against the GREEN FOREST. He hasn't sued the government. If they did something wrong, then I didn't do it wrong. And the other thing I suggested to you, there is proof in this case that two men, Moses Jackson and Howard McCoy, with the help of Second Officer Friend brought in four lines without difficulty.

There's proof in McCoy's own statement that apparently whatever Catanzaro was doing he was getting himself fouled in the lines and needed help. And perhaps you should look at his conduct. But I'm saying again, I could not really say, well, that's a terrible thing. Let's say that he too was under pressure. They are all under pressure. And there is no fault here that you can relate to the GREEN FOREST.

I have just two or three comments and I'm finished. I think, as I said, I think I have covered most of these things. These are things I heard Mr. Schwartzenberg say.

with that control they're able to move the flow of the line. That's the point. That's the purpose of the control. And putting it in neutral, stopping it, slows it down so it doesn't snap and whip. That's just the purpose of the control. That's why.

That factor alone stands out so glaringly that that alone is sufficient for the plaintiff to sustain himself in this case. He said you don't want slippage. On the contrary, he's telling you that the way it was handled, the way they handled it that this prevented the slipping.

On the contrary, you want slippage, that's just the whole point. That's why the five turns were too much.

THE COURT: You don't need to raise your voice, counsel.

MR. SCHWARTZENBERG: Your Honor asked me to bring it up before.

THE COURT: Don't lower it.

MR. SCHWARTZENBERG: Yes, sir.

Now, what about the eye, the comment about the eye? I'm not going to hit all his arguments, it's not necessary. I'm just pointing out to you that every one is fallacious.

He says, no trouble with the eye. I had told you that Capt. Price testified that that -- there was nothing

wrong, that wasn't a dangerous condition. Yes, that wasn't a dangerous condition. Therefore, that isn't what caused this accident, was it? If it wasn't a dangerous condition. What caused this accident was what happened, as I told you before, long before the day of the accident, October 31, 1970. It happened when the captain didn't replace the day man and the boatswain, or at least with somebody aboard the crew to do those jobs. And especially in those circumstances that day to do those jobs with the bow lines.

So you see, it's not what the ship -- the tug had nothing to do with the accident. The fact that it caught didn't make any difference, but that's unimportant. It's what existed aboard the ship already that caused the --

THE COURT: This is hardly rebuttal, counselor.

MR. SCHWARTZENBERG: I'm just taking his quotes, your Honor, one by one.

THE COURT: This is what you said in the first place.

MR. SCHWARTZENBERG: These are the same things Mr. Healey said here and I have them written down one by one. I won't do them all because it's not necessary to do them all. He said that, and I said that there was attacks six miles away, four miles away, whatever it is, like that. I wasn't talking about the day of this accident.

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THE COURT: Happened to be what?

MR. SCHWARTZENBERG: A hole in the sidewalk of the street, and you fell and hurt yourself, what's the cause of that accident? The wind or that hole? If that hole hadn't been there you wouldn't have fell. The hole was there before the wind. That's the whole point in this case.

Thank you.

THE COURT: All right. Very well. Now the jury is excused. It's almost half past 12:00, and I'm going to excuse you until 2:00 p.m. this afternoon at which time I shall hope to deliver my instructions and charge.

Thank you. Please continue to heed my instructions.

(Jury leaves the courtroom.)

THE COURT: I would like counsel to give to the court clerk all exhibits on each side so that I may have them and we will pass them on.

(Luncheon recess.)

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(In Open Court - Jury Present)

THE COURT: Now, members of the jury, before I commence my charge I want to ask you if you do not hear me at any time, any part of what I have to say, please rais your hand, and if I don't seem to see you, wave it around. In any event, Mr. Farley, our clerk, will then call it to my attention, and I shall repeat whatever is necessary.

Now, at this time you are about to enter upon your final function and decide the facts in this case insofar as liability is concerned. That is, whether this defendant is liable to this plaintiff in connection with the claim which is alleged. At this time, therefore, you will consider only this question.

You of course are, as you will know undoubtedly, the sole and exclusive judges of the facts. You pass upon the weight of the evidence, the credibility of the witnesses and you determine the reasonable inferences to be drawn from such conflicting evidence as there may be in this case.

It is my duty now to instruct you as to the law, and it is your duty to accept these instructions as to the law and to apply them to the facts as found by you in the course of your deliberations.

In your determination of the facts you rely

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or exercise the best judgment. Here the error of judgment of a wrong choice of action is not negligence when one is called upon to act quickly in the face of peril. Within the meaning of this a person is faced with an emergency situation when he is confronted by a sudden and unforeseen condition not brought about or contributed to by his or its own negligence.

If you find that the defendant was faced with an emergency and that its conduct was reasonable in the light of the emergency circumstances confronting it, your finding will be that defendant was not negligent. If, however, you find that the condition facing the defendant was not sudden and should reasonably have been foreseen, or was created or contributed to by the defendant's own negligence, then the defendant should be held negligent.

If in addition you find that the defendant under these circumstances did not act with reasonable prudence you may find that the defendant was negligent.

Now, I speak of this defence which is alleged by the shipping company here, contributory negligence. It has asserted that defence. Now, to

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in the port lines and then he crossed to the starboard side to assist Jackson and plaintiff in taking in the remaining line which was the so-called springline.

Mc Coy testified that as he approached the starboard side of the vessel he saw Jackson taking in the line from the drum, handing it to plaintiff, who was coiling it on the deck, when suddenly the line got stuck over the side of the vessel as he termed it, thereby causing the end of the line to lash back and forth in the course of which plaintiff was thrown up in the air and flipped over and landed on the deck.

Mc Coy said that the line was scorching, that is, the line was right on the drum, was tied on the drum when operated by the winch. On crossexamination Mc Coy stated that he received his $200 bonus for working under attack.

He also stated that one experienced seaman working carefully could take a line by himself. On directexamination he said that three men ordinarily did the work. And on crossexamination he conceded that there were enough.

I will not speak of the exhibits at this point. Then the plaintiff produced one Angelos Chris Ballolous, apparently a Greek, as a so-called expert.

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He has been a master mariner, as he testified, he mentioned his grades. He is presently a marine surveyor and maritime arbitrator, I think he said, and a maritime arbitrator as I understand it would be called upon to determine the value or the damage sometimes when there are two ships which collide. You heard his qualifications.

Now, the plaintiff's attorney posed certain hypothetical questions all of which were answered under opinions by him. He was asked to assume first certain facts which I leave to your recollection, then he was asked his opinion as to whether or not the second mate, Friend, was using good seamanship in the manner in which he positioned himself during the unmooring operation. And he replied in his opinion that it was not good seamanship.

Secondly, he was asked to assume certain other facts and he was asked whether or not the number of men present during the unmooring operation was adequate and he replied that in his opinion, no.

Third, he was asked another hypothetical question as to whether or not it was good seamanship for Friend to have failed to warn of the presence of a tug in the vicinity of the ship, and I believe he

you may retire now. You will be in charge of a deputy marshal and any messages you may send, send in by him.

Let me say, however, to the forelady, do not send in any messages in which you tell me how you stand. For instance, three to three or four to two or anything of that sort. Do not send in such messages.

If you want to ask about this or that, if you want to ask for testimony, state what testimony you want, which witness, and so forth, then sign it. You sign all of the notes, Madam Forelady.

All right, you may retire now.

(Jury leaves to deliberate.)

THE COURT: I want to say that when it comes to be about a quarter of 5:00 I shall expect to dismiss them with appropriate instructions for the night and for them to come back tomorrow morning to recommence deliberations.

That is all.

(Recess)

(In open court - jury not present.)

THE CLERK: Your Honor, this note from the jury is Court Exhibit No.4.

THE COURT: All right, mark it, please.

(Court Exhibit No.4 marked for Identification.)

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THE COURT: It just says, we have a verdict. Signed by the forelady.

(Jury enters the courtroom.)

THE COURT: Call the roll.

THE CLERK: Yes, your Honor.

Ladies and genlemen of the jury, please answer present as your name is called.

(Jury roll called - all present.)

THE CLERK: Madam Forelady, have the jurors agreed upon a verdict?

THE FORELADY: We have.

THE CLERK: How do you find to question No.1?

THE FORELADY: No.

THE CLERK: How do you find to question No.2?

THE FORELADY: No.

THE COURT: Is that signed by all six, madam?

THE FORELADY: Yes, sir.

THE COURT: Will you pass it up through the clerk to me?

Very well now, this means that there will be no further proceedings in this case and therefore these jurors are to be excused, Mr. Clerk.

(Jury excused.)

* * * *

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Giuseppe Catanzaro	27	110	138	
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Angelos Chris Boulalas	223	278	303	
John A. Waddell	362	395	445	445
Robert S. Friend	450	469		
Charles H. Price	495	501		

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6	227	228
7	231	231
9		331
Third Party Defendant		
A		391
B		385

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

MARC BOGATIN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 27 day of May 1976 deponent served the within Appendix upon:

Darby, Hurley, Stonebridge, Whelan
119 Rector Street
New York, N.Y. 10006

attorney(s) for defendant and third party plaintiff

U.S. Attorney Paul J. Curran
26 Federal Plaza
New York, N.Y. 10007

Attorney for third party defendant

in this action, at

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Marc Bogatin

Sworn to before me, this 27
day of May, 1976.

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132845
Qualified in Richmond County
Commission Expires March 30, 1977